TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. [illegible]

FORD MOTOR COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

No. [illegible]

COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., COMMERCIAL CREDIT CORPORATION, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA

FILED OCTOBER [illegible], 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 643

FORD MOTOR COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

No. 644

COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL CREDIT CORPORATION, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA

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[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

[Caption omitted]

UNITED STATES OF AMERICA, Complainant,

v.

FORD MOTOR COMPANY, COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL CREDIT CORPORATION, UNIVERSAL CREDIT COMPANY OF DELAWARE, UNIVERSAL CREDIT COMPANY OF INDIANA, and UNIVERSAL CREDIT COMPANY, INC., Respondents.

No. 8 Civil

COMPLAINT—Filed November 7, 1938

[fol. 2] To the Honorable the Judge of the District Court of the United States for the Northern District of Indiana, Sitting in Equity.

The United States of America, by James R. Fleming, United States Attorney for the Northern District of Indiana, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against the Ford Motor Company, the Universal Credit Corporation, the Universal Credit Company, a corporation, the Commercial Investment Trust Corporation, all of which are organized and duly authorized to do business under the laws of the State of Delaware; the Universal Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Indiana; the Universal Credit Company, Inc. and the Commercial Investment Trust, Inc. both organized and duly authorized to do business under the laws of the State of New York; all of which corporations are now doing business in the Northern District of Indiana, South Bend Division; and complains and alleges from information and belief as follows:

I

That defendant, Ford Motor Company, is engaged in the manufacture and sale of automobiles (herein referred to as

"Ford automobiles"); that defendants, Commercial Investment Trust Corporation and Commercial Investment Trust, Inc. are engaged in the business of financing the sale of automobiles, including Ford automobiles, by advancing funds to automobile dealers for the purchase at wholesale and to the public at retail of such automobiles; that defendants, Universal Credit Corporation, Universal Credit Company of Delaware, a corporation, Universal Credit Company of Indiana, a corporation, and Universal Credit Company, Inc. are engaged in the business of financing both the wholesale and retail sale of Ford cars exclusively; that defendant, Commercial Investment Trust Corporation owns 100% of the outstanding capital stock of defendant, Commercial Investment Trust, Incorporated, and 70% [fol. 3] of the outstanding capital stock of defendant, Universal Credit Corporation, a Corporation, and dominates and controls such companies; that defendant Universal Credit Corporation, owns 100% of the outstanding capital stock of defendants Universal Credit Company of Delaware, a corporation, Universal Credit Company of Indiana, a corporation, and Universal Credit Company, Inc. and dominates and controls such companies; that defendant Universal Credit Corporation, was organized in 1928 by defendant, Ford Motor Company, which acquired, owned and held all its capital stock and controlled and dominated it until 1933, at which time Ford Motor Company sold all the stock of Universal Credit Corporation to defendant, Commercial Investment Trust Corporation, and since such date the latter company has owned and controlled defendant, Universal Credit Corporation;

That defendants and each of them have been and are violating the provisions of Section I of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," 26 Stat. 209, commonly known as the Sherman Antitrust Act;

That under Section 4 of the above named Act the District courts of the United States are invested with jurisdiction to prevent and restrain violations of the Act;

That under Section 4 of the Act it is the duty of the several district Attorneys of the United States in their respective districts, under the supervision of the Attorney General, to institute proceedings in equity to prevent and

restrain violations, and that such proceedings may be instituted by way of a complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited;

That defendants and each of them for a period of three years immediately preceding the filing of this complaint, and for many years prior thereto have been and are guilty of violation of Section I of the Sherman Act in all parts of the United States, as well as in the Northern District of Indiana, South Bend Division, by combining and conspiring together to restrain and control the trade and com-[fol. 4] merce in Ford automobiles and the wholesale and retail sale and financing of Ford automobiles among the several states, and will continue such violations unless enjoined;

That defendants and each of them are within the jurisdiction of this Court for purposes of service.

II

Complainant alleges and complains further that the Ford Motor Company (hereinafter called "Ford"), the General Motors Corporation (hereinafter called "General Motors"), and the Chrysler Corporation and the subsidiary corporations owned and controlled by it (hereinafter called "Chrysler") are the principal manufacturers of motor cars in the United States and are competitors with each other; that for many years past, and particularly during the three-year period immediately preceding the filing of this complaint, Ford, General Motors and Chrysler, have manufactured, sold and delivered at wholesale approximately 90% of the automobiles manufactured in the United States, of which respondent, Ford Motor Company, has manufactured and sold approximately 23%; that the remaining 10% have been manufactured, sold and delivered by some 12 to 15 other manufacturers;

That during the period from January 1, 1934, to the date of the filing of this complaint, approximately 16,000,000 automobiles have been manufactured, sold and delivered at wholesale and retail in the United States; that of these General Motors has produced approximately 7,000,000, Chrysler approximately 4,000,000, Ford approximately 4,000,000 and the 12 or 15 other manufacturers, approximately 1,000,000;

That the automobiles of the Ford Motor Company are and have been at all material times manufactured at plants located in the States of Michigan, Minnesota, Illinois, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Virginia, Kentucky, Missouri, Georgia, Texas and California; those of the General Motors Corporation, at plants located in the States of Michigan; Wisconsin, Missouri, Georgia, New York, New Jersey and California; those of the Chrysler Corporation, at plants located in the [fol. 5] States of Michigan, Indiana and California;

That these automobiles are and at all material times have been manufactured, transported, sold, financed, and delivered in interstate commerce, each of the above steps being necessary and integral parts of a continuous flow of commerce in getting automobiles from the manufacturers to retail purchasers in the several states, including retail purchasers located in the Northern District of Indiana, South Bend Division, and that the evils complained of herein are incident to, a part of, and directly affect commerce among the several states and the flow thereof;

That the sale of motor-cars manufactured by Ford, General Motors and Chrysler to the public is and at all material times has been made through some 40,000 persons, companies and corporations known as automobile dealers, of whom approximately 11,000 are Ford dealers, located throughout the several states, who are engaged in the business of buying and selling automobiles; that dealers purchase new automobiles from the manufacturers thereof pursuant to contracts which are subject to cancellation at the will of either party; that cars, including Ford cars, when purchased by dealers, have been and will continue to be transported from the above named places of manufacture to dealers located in the several states, including many dealers located in the Northern District of Indiana, South Bend Division;

That during the three-year period immediately preceding the filing of this complaint, as well as during many years prior thereto, Ford, General Motors, and Chrysler have required and will continue to require payment in cash at the factory for all cars sold by them, prior to transportation and delivery thereof in interstate commerce from the factory to dealers located in the several states, as well as many dealers located in the Northern District of Indiana, South Bend Division;

That during the past three years approximately $12,500,000,000 has been paid to automobile manufacturers for new cars shipped to dealers, of which approximately $6,500,000,000 has been paid for cars manufactured by General Motors, $2,500,000,000 for cars manufactured by [fol. 6] Chrysler, and $2,500,000,000 for cars manufactured by Ford, and approximately $1,000,000,000 for cars manufactured by the remaining 12 to 15 automobile manufacturers;

That because of the high unit prices of automobiles demanded by respondent, Ford, Chrysler and General Motors, and because said manufacturers have required payment for cars in cash before shipment and delivery to dealers it has been necessary for the great majority of dealers to secure money in large quantities from sources other than their own; that in order to supply these necessary funds many automobile finance companies have been organized and have been regularly and continuously engaged in the business of lending funds to such dealers for the purchase of cars from the manufacturers, which loans are secured by the cars so purchased; that there are three major groups of finance companies (hereinafter referred to as the "affiliated finance companies") engaged in the business of supplying funds to dealers for the purchase of automobiles, and that each of said groups of companies is affiliated with one of the major manufacturers pursuant to stock ownership, contract or working agreement; that respondents, Commercial Investment Trust Corporation, Commercial Invest Trust, Incorporated, Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc. (herein referred to as "respondent finance companies") are affiliated with Ford, originally by stock ownership and currently by working agreement; the General Motors Acceptance Corporation and its subsidiary companies with General Motors through 100% stock ownership of the former by the latter; and Commercial Credit Company and its affiliates with Chrysler through contractual agreement and partial stock ownership of the former by the latter; that the affiliated finance companies have furnished the major portion of the funds required by dealers of the three above named manufacturers in financing their purchases of new cars; that in addition to the affiliated finance companies there are approximately

375 finance companies, as well as banks and other lending institutions, which have no relation to the three major manufacturers either by stock ownership, contract or work-
[fol. 7] ing agreement (arbitrarily referred to herein as "independent finance companies") which are located in all states in the United States and are there engaged, either in whole or in part, in financing the sale of automobiles by manufacturers to dealers; that during the three-year period immediately preceding the filing of this complaint the affiliated and independent finance companies have supplied to dealers of the three-above named automobile manufacturers for purposes of financing such dealers' purchase of new cars approximately $5,500,000,000 of which the affiliated finance companies have supplied approximately $4,500,000,000 and the independent finance companies have supplied approximately $1,000,000,000; that during the same three-year period the Universal Credit Company and its affiliates have financed approximately 82% of the Ford cars supplied to Ford dealers and independent finance companies have financed the remaining 18%;

That approximately 60% of the new cars manufactured by the three above-named manufacturers at all material times have been sold at retail by dealers upon the so-called installment plan which requires the purchaser to pay a part of the purchase price at the time of the sale, either in cash or in a used car, or both, with the remainder to be paid in installments; that since dealers have been unable generally to finance such sales on credit with their own funds, the affiliated and independent finance companies have advanced funds to individual purchasers of new cars who purchase them on the installment plan; that the funds so advanced are secured by the installment note of the purchaser, indorsed by the dealer with or without recourse, as the case may be, and secured by the pledge of the automobile so purchased; that during the three years immediately preceding the filing of this complaint approximately 6,500,000 new cars have been sold on the installment plan; that affiliated and independent finance companies have furnished approximately $6,000,000,000 to purchasers, $5,000,000,000 of which has been supplied by the affiliated finance companies and $1,000,000,000 by the independent finance companies; that during said period Universal Credit Company and its affiliates have supplied approximately 70% of

[fol. 8] the funds required to finance the retail time sales of Ford dealers.

III

Complainant alleges and complains further that each of the three major automobile manufacturers, General Motors, Chrysler, and respondent, Ford, together with their respective affiliated finance companies, General Motors Acceptance Corporation, Commercial Credit Corporation and its affiliates, and respondent, Universal Credit Company and its affiliates, respectively, have at all material times conspired separately to impede unreasonably the free flow of commerce in automobiles and in the financing thereof in the several states, as well as in the Northern District of Indiana, South Bend Division, by excluding or attempting to exclude all other finance companies from financing the wholesale sale of new cars to dealers and the retail sale of new and used cars by dealers; that respondent, Ford Motor Company, and respondents, Commercial Investment Trust Corporation, Commercial Investment Trust, Incorporated, Universal credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., have employed, among others, the following means and have done the following overt acts for the purpose of affecting the conspiracies herein alleged, to wit:

1. That dealers of the Ford Motor Company, numbering approximately 11,000 during the three-year period immediately preceding the filing of this complaint, have been coerced, intimidated and discriminated against by the said Ford Motor Company for the purpose and with the effect of forcing them to use the services and facilities of respondent finance companies herein, in financing both wholesale and retail purchases of Ford motor-cars;

2. That Ford dealers have been required by the Ford Motor Company to promise to use the facilities of respondent finance companies under threats of cancellation of their dealer contracts with Ford Motor Company;

3. That dealers refusing to make their purchases and sales of Ford cars through respondent finance companies, [fol. 9] in many instances, have had their dealer contracts

cancelled by the Ford Motor Company without notice and without statement of cause;

4. That the Ford Motor Company has refused to deliver cars to dealers refusing the use of such services;

5. That Ford has delivered to dealers who failed to finance through respondent finance companies cars on occasions when none were ordered;

6. That Ford has delayed unduly shipments of cars ordered by dealers who refused to use the facilities of respondent finance companies;

7. That Ford has shipped to dealers who refused to use the facilities of respondent finance companies cars of different color, design, model, style and number than those ordered, and have favored those dealers availing themselves of the services of respondent finance companies with respect to services, facilities, privileges and conveniences in the delivery of cars;

8. That Ford dealers are and have been at all material times required by respondent Ford Motor Company to permit respondent finance companies to inspect their books, records and accounts for the purpose of determining the amount of financing done by the dealers with respondent finance companies, as well as with the independents, and that such privileges have been and are denied independent finance companies;

9. That Ford dealers have been and are required by respondent Ford Motor Company to disclose the amount of finance business done with independent finance companies;

10. That respondent, Ford Motor Company, by various means, divulges to respondent finance companies or permits them to secure from the agents, servants and employees of Ford dealers information relative to the finance business done by such dealers with independent finance companies, which privileges are denied the independent finance companies;

11. That the Ford Motor Company furnishes respondent finance companies with office space in its factories enabling [fol. 10] the latter to determine the number of cars ordered by individual dealers and other information relating to

their business, and convenient facilities for carrying on their finance business, which privilege is denied the independent finance companies;

12. That respondent, Ford Motor Company, permits representatives of respondent finance companies to attend Ford district, divisional and national sales meetings with Ford dealers for the purpose of urging such dealers to patronize respondent finance companies, which privileges are denied the independent finance companies;

13. That respondent, Ford Motor Company, furnishes respondent finance companies with all contracts with dealers and other instruments deemed necessary to security in delivering cars to dealers, which privileges are denied the independent finance companies;

14. That respondent, Ford Motor Company, advertises, indorses and recommends the financing services of respondent finance companies to dealers and to the public while refusing to do the same for independent finance companies;

15. That respondent, Ford Motor Company, furnishes respondent finance companies with information relating to the purchase, sale, transportation and delivery of cars to Ford dealers, including a description and identification of cars, and refuses the same to independent finance companies;

16. That Ford passes title to Ford cars financed through the facilities of the respondent finance companies to those finance companies before the car is shipped to the dealer, the latter securing only possession and custody and accepts payment from respondent finance companies for such cars, while it refuses to accept payment for cars from independent finance companies or to pass title to them but will accept payment for cars financed by independent finance companies only from the dealer and will deliver title only to the dealer;

17. That dealers financing retail time sales through respondent finance companies are required by the latter to indorse the notes of the retail purchaser with recourse and [fol. 11] thus to assume a secondary liability for their payments;

18. That respondent finance companies require dealers to include in the charge made by them to retail purchasers for financing the sale of Ford automobiles on the installment plan a so-called dealers' reserve in an amount fixed and prescribed by them, which is in addition to interest, insurance and all other charges made by the dealer; that the alleged purpose of such reserve is to compensate the dealer for losses sustained by him in case of default by the purchaser in the payment of the full purchase price of the automobile purchased by him; that such reserves, when paid by the purchaser to the respondent finance company, are retained by it until the purchaser's obligation has been paid in full, at which time it is either paid over to the dealer or retained further as security for the payment of other obligations of the dealer to respondent finance companies; that such dealers' reserve is not fixed by respondent finance companies on an actuarial basis and is and has been far in excess of actual losses sustained by dealers; that purchasers of automobiles from Ford dealers are not advised that any dealers' reserve is included in the charge made for such purchase; that this reserve is in the nature of a rebate to dealers to induce them to use the services of respondent finance companies and increases unduly the time sales purchase price to the automobile purchaser; that during the period from 1925 to and including the date of the filing of this complaint, respondent finance companies have paid to dealers as such reserves sums totalling more than $54,000,000, and for the year 1937, sums totalling more than $9,000,000; that respondent finance companies now have in their possession large sums of money, to wit, many millions of dollars in the form of dealer reserves collected from purchasers without their knowledge and not yet rebated to dealers;

19. That respondents have discriminated against independent finance companies with respect to the manner, form and time of payment for time sales paper purchased by them;

20. That for the purpose of inducing Ford dealers to make use of their services, respondent finance companies have represented to such dealers that Ford would discriminate against them in the time and manner of [fol. 12] delivery of automobiles to them and otherwise unless such dealers made use of the services of respondent

finance companies; that agents of Ford and respondent finance companies, by prearrangement, have jointly visited dealers with the purpose and effect, by threats, persuasion and intimidation of inducing such dealers to make use of the services of respondent finance companies;

21. That, unless enjoined, Ford will hereafter in pursuance of the conspiracy herein alleged, discriminate against independent finance companies and in favor of respondent finance companies by the acquisition of stock or other interest in respondent finance companies or by making loans or gifts to respondent finance companies and denying same to independent finance companies;

22. That at all times material and within the three years immediately preceding the filing of this complaint, as well as for many years prior thereto, respondents and all of them have regularly and continuously carried out, performed, engaged in and committed all of the acts, practices, arrangements, agreements, discriminations, threats and wrongs described hereinabove in all states of the United States, as well as in the Northern District of Indiana, South Bend Division, and unless enjoined will continue so to do.

IV

Complainant alleges and complains further that the purpose and effect of the aforementioned practices of respondents have been to procure, restrain and keep within their control to the greatest extent possible and to the exclusion of all other persons, companies and corporations, the business of financing the trade and commerce of new Ford automobiles among the several states and in used automobiles of any make and model handled by Ford dealers; that substantial investments, credit and property of many Ford dealers have been either destroyed, reduced in value or jeopardized by the practices described hereinabove; that the retail price of automobiles to the public has been increased unreasonably by such practices; that such practices have jeopardized and destroyed the business [fol. 13] of independents; that such practices have been pursued by respondents continuously for the three-year period immediately preceding the filing of this complaint, as well as for many years prior thereto; that such acts

and practices are continuous and will continue in the future unless restrained, enjoined and prohibited by this Court.

WHEREFORE, complainant prays that respondent, Ford Motor Company, and its officers, directors, agents and servants be restrained, enjoined and prohibited from doing or causing to be done any of the following;

1. From coercing its dealers in the manner described in particular hereinabove, or in any way, to use the financing facilities of respondent finance companies;

2. From discriminating in ways more particularly set out hereinabove, or in any way, against Ford dealers who do business with independent finance companies;

3. From discriminating against independent finance companies in the financing by Ford dealers of both wholesale and retail purchases of Ford cars, and used cars taken by dealers on trade in the sale of new cars;

4. From requiring any dealer by threats, intimidation, contractual arrangement or otherwise, to use a particular plan or rate of financing;

5. From cancelling or threatening to cancel any contract, franchise or agreement with any dealer because of failure of such dealer to patronize respondent finance companies;

6. From agreeing with any finance company that an agent of the finance company and the manufacturer will be present for the purpose of influencing the dealer to patronize any particular finance company;

7. From recommending or advertising any particular finance company to any dealer or to the public;

8. From acquiring in any way an interest in any finance company or by gift, loan or otherwise rendering financial assistance to any finance company.

[fol. 14] Complainant prays further:

1. That respondent, Ford Motor Company, its officers, directors, agents and servants, be required to make available to independent finance companies privileges, services and facilities substantially similar to those made available to respondent finance company, without discrimination, including space in the factory, information relating to iden-

tity of dealers and amount of business done with competitors, attendance at district division, factory and national sales meetings, provided such privileges are accorded respondent finance companies;

2. That respondent, Ford Motor Company, its officers, directors, agents and servants, be required to assign title or lien to all cars sold to dealers to any and all finance companies on similar terms.

Complainant prays further that respondent finance companies and each of them, their officers, directors, agents and servants, be restrained, enjoined and prohibited from doing or causing to be done any of the following:

1. From representing to any dealer that the manufacturer requires him to patronize any particular finance company;

2. From representing to any dealer that his franchise will be cancelled for failure to patronize respondent finance companies;

3. From requiring dealers to include in their retail time sales price of automobiles any sum in the form of a dealers' reserve, rebate, pack or otherwise.

Complainant prays further that discriminations of all types as between affiliated or favored finance companies and independents be prohibited; that all automobile finance companies be treated alike or in such manner as the Court may deem necessary and proper to maintain the good-will of the manufacturer.

Complainant prays further that this Court retain continuing jurisdiction of this cause for purposes of carrying out the matters herein prayed for, and for such further order or orders and for such other and further relief as the Court may deem necessary, equitable, just and proper in the premises.

[fols. 15-16] James R. Fleming, United States Attorney for the Northern District of Indiana.

Homer Cummings, Attorney General of the United States. Thurman Arnold, Assistant Attorney General of the United States, John J. Abt, Homes Baldridge, Special Assistants to the Attorney General of the United States.

[fol. 17] IN UNITED STATES DISTRICT COURT

SEVERAL ANSWER OF FORD MOTOR COMPANY, A DEFENDANT—Filed November 7, 1938

To the Honorable the Judge of the District Court of the United States for the Northern District of Indiana, Sitting in Equity:

The Ford Motor Company, a corporation organized and authorized to do business under and by virtue of the laws of the State of Delaware, one of the defendants herein, for its several answer to the complaint in this cause respectfully says:

First Defense

The Complaint fails to state a claim against defendant Ford Motor Company, upon which relief can be granted.

Second Defense

In answer to the preamble to the complaint, this defendant admits that it is organized and authorized to do business under the laws of the State of Delaware and avers that it has a place of business in the City of Indianapolis, in the State of Indiana, and that it sells goods to persons, firms and corporations having places of business in the Northern District of Indiana, South Bend Division but denies that it has any place of business in, or is now doing business in the Northern District of Indiana, South Bend Division. It believes the other allegations of said preamble to be true but has no actual knowledge of the facts.

I

In answer to paragraph I of the complaint, this defendant admits (a) that it is engaged in the manufacture and sale of automobiles; (b) that Universal Credit Corporation was organized by this defendant in 1928 and that this defendant then acquired a major portion of the capital stock of that corporation and controlled it by stock ownership until 1933 when this defendant, Ford Motor Company, sold all its stock in said Universal Credit Corporation to defendant, Commercial Investment Trust Corporation (c) That this defendant has a place of business in the City of Indianapolis in the State of Indiana in charge of an agent upon whom process of this court could be served. This

[fol. 18] defendant believes (a) that Commercial Investment Trust Corporation and Commercial Investment Trust, Inc. are directly or indirectly engaged in the business of financing the sale of automobiles by advancing funds to automobile dealers for purchase at wholesale and sale to the public at retail of such automobiles but has no actual knowledge of the facts; (b) That Universal Credit Corporation, Universal Credit Company, a Delaware corporation, Universal Credit Company, an Indiana corporation, and Universal Credit Company, Inc. are also engaged in the business of financing both at wholesale and at retail sale of Ford cars but does not have exact knowledge as to which company is handling the transactions, and has no knowledge or information sufficient to form a belief as to whether those companies are engaged in that business exclusively. This defendant has no knowledge or information sufficient to form a belief as to the allegations of said paragraph (a) regarding ownership by Commercial Investment Trust Corporation of stock in other corporations or domination and control by it of other corporations; (b) regarding ownership by Universal Credit Corporation of capital stock of other corporations or domination or control by it of other corporations; (c) regarding ownership and control of Universal Credit Corporation since 1933; (d) as to the jurisdiction of the court over the other defendants. This defendant denies all the other allegations of fact contained in said paragraph I.

II

In answer to paragraph II of said complaint, this defendant, Ford Motor Company admits (a) that automobiles are manufactured in the United States by a number of manufacturers (it does not know the exact number) of whom this defendant, General Motors and its affiliated companies, and Chrysler and its affiliated companies, who are competitors with each other, are the principal ones; (b) that during the period from January 1, 1934 to date this defendant produced approximately 4,000,000 automobiles, which it believes to have been at least 23% of the total; (c) that this defendant has factories in the various states alleged in that paragraph at which at some times within material times, but not always, automobiles have been manufactured; (d) that General Motors or its affiliated [fol. 19] companies and Chrysler or its affiliated companies

have also manufactured automobiles at plants in various states but this defendant does not know whether the list of states averred is exactly accurate; (e) that automobiles manufactured by this defendant have been sold by this defendant to dealers, located in other states than that where manufactured, who have purchased for resale to retail purchasers, and have been transported from the state where manufactured to the places of business of such dealers in other states (f) that such sales have included sales to dealers in the Northern District of Indiana, South Bend Division, from factories in other states; (g) that a large number of persons, companies and corporations are engaged in business as automobile dealers; it does not know how many but the number includes approximately 7,000 regular Ford dealers, besides a considerable number of associate dealers and sub-dealers; (h) that it is its practice, and it believes that it is the usual practice of the industry, to have automobiles paid for before shipment or before delivery by the carrier after shipment (i) that during the past three years a large sum, but something less than $2,500,000,000 has been paid to this defendant for automobiles manufactured by it and shipped to its dealers, and large sums, but it does not know how large, have been paid to other manufacturers for automobiles manufactured by other manufacturers and shipped to their dealers (j) that many automobile dealers do procure money in large sums from sources other than their own to finance the purchase of automobiles and their resale to retail purchasers; (k) that a large number of finance companies have been organized which have engaged in the business of financing automobiles as have various banks and other financial institutions; (l) that Universal Credit Corporation and its affiliated companies has financed a considerable number of the cars supplied to Ford dealers; (m) that many automobiles are sold at retail on the installment plan, (n) that various finance companies and other financial institutions finance such sales; (o) that during the three years immediately preceding the filing of this complaint many new cars have been sold on the installment plan; (p) that Universal Credit Company and its affiliated companies have supplied the funds to finance the installment sales of a [fol. 20] large number of Ford dealers but this defendant does not know exactly how many. This defendant believes

General Motors Acceptance Corporation and its affiliated companies finance the sale of a considerable number of the cars manufactured and sold by General Motors Corporation or its affiliated companies, and Commercial Credit Company or its affiliated companies finance a considerable number of cars manufactured and sold by Chrysler or its affiliated companies. This defendant has no knowledge or information sufficient to form a belief as to the other allegations of said paragraph II of the complaint regarding others than this defendant. It denies all of the other allegations regarding this defendant.

III

In answer to the allegations of Paragraph III of said complaint, this defendant denies all of the averments of that paragraph regarding this defendant, Ford Motor Company, and concerning acts and arrangements matters and things to which this defendant, Ford Motor Company, is averred to be a party. This defendant says it has no knowledge or information sufficient to form a belief as to the allegations contained in said paragraph III relating to others and to acts and arrangements, matters and things to which this defendant is not a party.

IV

In answer to the allegations of Paragraph IV of said complaint, this defendant denies all of the averments of that paragraph regarding this defendant, Ford Motor Company, and concerning acts and arrangements, matters and things to which this defendant, Ford Motor Company, is averred to be a party. This defendant says it has no knowledge or information sufficient to form a belief as to the allegations contained in said paragraph IV relating to others and to acts and arrangement, matters and things to which this defendant is not a party.

[fols. 21-22]

V

This defendant denies all portions of said complaint not hereinbefore specifically answered.

Third Defense

This defendant, Ford Motor Company, avers that the matters and things set forth in the complaint do not in-

volve interstate commerce, do not involved the Sherman Anti-Trust Act, do not involve the Constitution and laws of the United States of America, and hence, this court is entirely without jurisdiction.

Fourth Defense

This defendant, Ford Motor Company, further avers that the subject matter of this suit is not within the venue of this court and therefore none of the claims made by the complainant can be properly adjudicated and determined in this court.

Wherefore, this defendant, Ford Motor Company, denies that the complainant is entitled to the relief prayed for, or any portion thereof, or to any relief, and prays that the complaint herein be dismissed.

Bodman, Longley, Bogle & Middleton & Farley, Clifford S. Longley, Wallace R. Midderton, Attorneys for defendant, Ford Motor Company, 1400 Buhl Building, Detroit, Michigan.

Dated: November 7, 1938.

[fol. 23] In the District Court of the United States, for the Northern District of Indiana.

No. 8 Civil

United States of America, Petitioner,

against

Ford Motor Company, Universal Credit Corporation, et al., Respondents.

Final Decree—Filed November 15, 1938

1. The United States of America filed its petition herein on November 7, 1938; each of the respondents appeared and filed its answer to such petition, and asserted the truth of its answer and its innocence of any violation of law; the petitioner and the said respondents desire to avoid the expenses of a trial of the issues therein and the loss of time occasioned, thereby; no testimony having been taken, each of the respondents consented to the entry of this decree without any findings of fact, upon condition

that neither such consent nor this decree shall be considered an admission or adjudication that it has violated any statute; and the United States of America by its counsel having consented to the entry of this decree and to each and every provision thereof, and having moved the court for this injunction,

THEREFORE, it is ordered, adjudged and decreed as follows:

2. That the court has jurisdiction of all persons and parties hereto; and for the purposes of this decree and proceedings for the enforcement thereof, and for no other purpose, that the court has jurisdiction of the subject matter hereof and the petition states a cause of action against [fol. 24] the respondents under the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies".

3. "Respondent Finance Company" as used in this decree shall include Universal Credit Corporation, Universal Credit Company (a Delaware corporation), Universal Credit Company (an Indiana corporation), Universal Credit Company, Inc., Commercial Investment Trust Corporation, and Commercial Investment Trust Incorporated and their officers, directors, agents and employees. "Manufacturer" as used in this decree shall include Ford Motor Company and its officers, directors, agents and employees.

4. The respondents, their officers, directors, agents and employees, be and they are hereby enjoined from doing the acts hereby prohibited and to do the acts hereby directed.

5. The following terms, as used in this decree, shall have the following meanings:

(a) "Person" shall mean a person, firm, corporation or association.

(b) "Dealer" shall mean a person who holds a franchise from or approved by, the Manufacturer, that provides for the purchase at wholesale of new automobiles made by the Manufacturer, and who resells the automobiles at retail.

(c) "Wholesale financing" shall mean the advancing by a finance company, as hereinafter defined, of money or credit to or for the account of a dealer to cover, in whole or in part, the cost of new automobiles ordered by the dealer at wholesale.

(d) "Retail financing" shall mean the purchase or other acquisition of retail time sales paper from dealers by finance companies, as hereinafter defined.

(e) "Finance charge" shall mean the difference between the cash delivered price of an automobile and the [fol. 25] price of that automobile when sold on an installment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

(f) "Finance company" shall mean a person engaged chiefly in wholesale financing or retail financing, or both.

(g) "Retail time sales paper" shall mean any conditional sale contract, chattel mortgage, lease, note or other instrument given to evidence or secure the obligation to pay the whole or any part of the price of automobiles sold by a dealer at retail.

(h) "A finance company" or "any finance company" shall include Respondent Finance Company.

(i) "Registered finance company" shall mean a finance company which shall be registered as provided in subparagraph (j) of paragraph 6 of this decree including Respondent Finance Company if it be a registered finance company.

(j) "Chrysler Corporation" means Chrysler Corporation, a corporation of the State of Delaware and its subsidiaries and successors, "General Motors Corporation" means General Motors Corporation, a corporation of the State of Delaware and its subsidiaries and successors, and "General Motors Acceptance Corporation" means General Motors Acceptance Corporation, a corporation of the State of New York and General Motors Acceptance Corporation of Indiana, Incorporated, a corporation of the State of Indiana, and their subsidiaries and successors.

6. The Manufacturer:

(a) Shall permit any finance company or other person

to pay for any automobile shipped or otherwise delivered by the Manufacturer to any dealer, upon written specific or continuing authority of the dealer;

(b) So long as the Manufacturer shall continue to give or assign to Respondent Finance Company or any other finance company, any document of title or lien in respect [fol. 26] of such automobiles, it shall not refuse, upon written request of any other finance company, to make available or assign to it similar documents of title or lien in respect of automobiles similarly shipped or delivered to the dealer and paid for by the finance company upon substantially similar terms and conditions;

(c) So long as the Manufacturer shall continue to furnish Respondent Finance Company or any other finance company space for maintaining an office in any place of business of the Manufacturer, it shall not refuse, upon substantially equivalent terms and conditions and upon written request of any other finance company that extends wholesale financing facilities to dealers operating under franchise of the Manufacturer, to furnish it space for maintaining an office in such place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6;

(d) So long as the Manufacturer shall knowingly continue to furnish to Respondent Finance Company or any other finance company the identity of or other information concerning dealers or prospective dealers, it shall not knowingly refuse to furnish corresponding information, upon substantially similar terms and conditions and upon specific or continuing request as to identity and specific but non-continuing request as to other information, to any other finance company whose territory includes the location of such dealer's or prospective dealer's place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6, or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

(e) Except as provided by sub-paragraphs (j) and (k) of this paragraph 6,

(i) the Manufacturer shall not establish any practice, procedure or plan for the retail or wholesale financing of automobiles for the purpose of enabling [fol. 27] Respondent Finance Company or any other finance company or companies to enjoy a competitive advantage in obtaining the patronage of dealers through any service, facility or privilege extended by the Manufacturer pursuant to such practice, procedure or plan if such service, facility or privilege or a service, facility or privilege corresponding thereto, is not made available upon its written request to any other finance company upon substantially similar terms and conditions; and

(ii) so long as the Manufacturer shall continue to afford any service, facility or privilege not otherwise specifically referred to in this decree to Respondent Finance Company or any other finance company or companies, it shall not refuse to afford similar or corresponding services, facilities or privileges upon substantially similar terms and conditions and upon written request to any other finance company for the purpose of giving Respondent Finance Company or any other finance company or companies a competitive advantage in obtaining the patronage of dealers; provided that it shall not be a violation of this decree for the Manufacturer to afford such service, facility or privilege only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6 or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

the written request shall specify in each instance the particular service, facility or privilege desired;

(f) The Manufacturer shall not give or make available or deny or threaten to deny to any dealer any service or facility, or discriminate among its dealers in any other manner, for the purpose of influencing a dealer to patronize Respondent Finance Company or any other finance company, or registered finance companies;

(g) The Manufacturer shall not enter into or further continue any contract or agreement with any dealer (1) which provides that the dealer shall patronize only Re-

spondent Finance Company or any other finance company selected by the Manufacturer or registered finance companies or (2) which requires the dealer to observe any [fol. 28] plan for or rate of financing the purchase and sale of automobiles designated by the Manufacturer;

(h) The Manufacturer shall not cancel or terminate any contract, franchise or agreement with any dealer, or threaten to do so, because of failure of such dealer to patronize Respondent Finance Company, or any other finance company, or because of the failure of the dealer to patronize registered finance companies;

(i) The Manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with Respondent Finance Company or any other finance company that an agent of the Manufacturer and an agent of the finance company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer to patronize Respondent Finance Company or such other finance company; provided, however, that it shall not be a violation of this decree for the Manufacturer to assist any dealer or prospective dealer, because of said dealer's or prospective dealer's financial situation or requirements, by joint conference with him and a representative of a particular finance company, to obtain special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) from the particular finance company and, in part consideration of such special facilities or services, for such dealer or prospective dealer to arrange to do business with such finance company on an exclusive basis for a reasonable period of time as may be agreed between them;

(j) As used in this decree the word "registered" as applied to a finance company means a finance company that shall have done the following things and shall have filed a statement that meets the following requirements:

1. The statement shall be signed and acknowledged by the finance company and sworn to by an officer thereof, and shall have been filed in this proceeding and a copy

thereof certified by the clerk shall have been served on the Manufacturer.

[fol. 29] 2. The finance company shall not in any manner have withdrawn the statement or rendered it ineffective.

3. The court shall not have made an order to the effect that the finance company shall cease to be a registered finance company; or, if so, the finance company shall have obtained an order reinstating it as a registered finance company, or otherwise shall have become again a registered finance company.

4. The statement shall be in the following form:

"To Ford Motor Company (hereinafter called the 'Manufacturer'):

"(A) This statement is made pursuant to subparagraph (j) of paragraph 6 of a decree of the United States District Court for the Northern District of Indiana, in a cause entitled 'United States of America vs. Ford Motor Company, et al.', dated November 15, 1938.

"(B) The undersigned finance company, in acquiring retail time sales paper, arising from sales of automobiles, from dealers of the manufacturer, wherever located, will conform to the following rules:

(1) If the finance company acquires retail time sales paper from a dealer of the Manufacturer on a finance plan which includes insurance to be arranged for by the finance company, the finance company shall (unless the insurance company to which the risk is submitted declines to write the risk) arrange for such insurance as the dealer represents to the finance company is to be arranged for by it and shall mail or cause to be mailed to the buyer a policy or certificate of insurance so arranged for within twenty-five days after the finance company acquires such retail time sales paper. Such policy or certificate shall recite the character of the coverage and the amount of the insurance premium;

(2) The finance company will not require or accept assignments of wages or salaries, or garnish wages

or salaries to collect deficiency judgments in respect of [fol. 30] automobiles sold for less than $1,000 and for private and non-commercial use unless, prior to repossession, it has requested the buyer to return the automobile to it and he has not done so;

(3) The finance company will not take any deficiency judgment where the retail purchaser of an automobile, sold for private and non-commercial use, has paid at least 50% of his note or other obligation, and will not collect from any retail purchaser of an automobile, through deficiency or other judgments, any amount in excess of its actual losses and expenses upon the failure of such purchaser to pay his note or other obligation, and will pay to or credit to the account of such purchaser any surplus over the amount owing by him on his note or other obligation which the finance company or its nominee or its affiliated or subsidiary company may realize on the purchaser's note or other obligation and the automobile or any other security therefor;

(4) The finance company will not assign or transfer any retail time sales paper owned or held by it to any other person, except a dealer from whom the finance company acquired the paper on a full recourse basis rather than upon a non-recourse basis or upon the dealer's agreement to repurchase the automobile if repossessed, without limiting the rights, and creating an obligation in its assignee and his successors in interest, to proceed against the retail buyer only in the manner and to the extent that the finance company is authorized to proceed hereunder;

(5) The finance company will not make a higher charge, for granting an extension or rewriting a transaction, than the approximate pro-rata equivalent of the original finance charge, or charge more than 5 per cent. of the delinquent instalments for reinstating a delinquent account or charge more than its out-of-pocket expense plus a reasonable amount for the time of its employes as collection or repossession expenses;

[fol. 31] (6) The finance company will not require the dealer to take a chattel mortgage or other lien on

property other than the automobile purchased, as additional security for the payment for such automobile sold for private and non-commercial use; and will not accept an assignment from the dealer of such a chattel mortgage or other lien;

(7) The finance company will not represent to any person that it is, in any way, connected or affiliated with the Manufacturer, or that it has been approved, recommended or endorsed by the Manufacturer, or in any way ascribe to the Manufacturer or its dealers responsibility for, or authorization of, its acts; but this shall not prevent the finance company from stating if that be the case that it is a registered finance company, and at any time when a plan adopted by the Manufacturer is in effect this shall not prevent the finance company from stating if that be the case that it is a registered finance company and is offering financing service in accordance with the plan;

(8) The finance company will not intentionally do anything injurious to the good will of the Manufacturer or to the reputation of its products, or to the good will of its dealers except as may result from the assertion of any legal or contractual rights;

(9) The finance company will not without the consent of the Manufacturer disclose to any competitor of the Manufacturer information which it shall have received from the Manufacturer;

(10) The finance company will disclose to the purchaser whatever information is required to be disclosed by, and will otherwise comply with, any further order of the court entered pursuant to paragraph 8 of the decree hereinbefore mentioned;

(11) The finance company will not violate any other reasonable rule hereafter from time to time established [fol. 32] by the Manufacturer, approved by the Department of Justice of the United States and incorporated herein by the further order of the United States District Court for the Northern District of Indiana, after notice by registered mail to all registered finance companies and notice in such form as the court may determine to be reasonable to other

finance companies and interested parties and an opportunity for hearing to the persons so notified.

"(C) The area within which the finance company conducts its business is: [*insert either 'the United States' or the names of specific states, counties or cities*], and notwithstanding the designation of an area, the finance company nevertheless will comply with clause (B) in all areas in which it may now or hereafter do business with dealers of the Manufacturer.

"(D) This statement is filed on behalf of, and shall bind, the undersigned finance company and all finance companies owned or controlled by the undersigned finance company, and all finance companies which own or control the undersigned finance company or are under common ownership or control with it.

"(E) The address of the finance company's principal office is —— ——."

—— —— Finance Company, by —— ——, President.

Attest: —— ——, Secretary.

[fol. 33] State of
County of ss.:

On this day of , 19 , personally appeared before me, a notary public,
to me known and known to me to be the person who executed the foregoing statement, and who by me being duly sworn acknowledged and deposed that he is President of said Corporation; that he executed the foregoing statement on its behalf; that he executed said statement by authority of the Board of Directors of said corporation and that the seal of said corporation was thereunto affixed by like authority.

—— ——, Notary Public.

STATE OF
County of ss.:

, being duly sworn, deposes and says that he is an officer, to wit the of , the finance company which executed the foregoing statement, and that said statement is in all respects true.

—— ——,

Signed and sworn to before me this day of 19

——, Notary Public.

[fol. 34] [Appropriate changes to be made for finance companies which are not corporations.]

5. Any registered finance company may file with the court a notice in writing of its withdrawal of its sworn statement above mentioned, and serve upon the manufacturer a copy of said notice, certified by the Clerk of the Court, and ninety days after such service or at such later date as may be stated in the notice, the finance company shall cease to be a registered finance company and the Manufacturer shall notify its dealers that such finance company has ceased to be a registered finance company.

6. The Manufacturer shall notify each finance company, which makes written specific or continuing request therefor, by registered mail of every additional rule which is incorporated in the sworn statement as provided in subdivision (11) of clause (B) of sub-paragraph (j) of this paragraph 6. The notice shall set forth the provisions of the rule and the date, not less than thirty days after the date of mailing the notice, upon which the rule shall go into effect. Any registered finance company so notified may before that date file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said rule, and serve upon the Manufacturer a copy of said notice certified by the Clerk of the Court, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

7. The Petitioner, the Manufacturer or any registered

finance company shall be entitled to make application to the court, for an order herein finding and adjudging that a registered finance company has failed to comply with its sworn statement, and jurisdiction of this cause is reserved for the entry of orders upon such applications as the facts and justice may require (after such notice and hearing as the court may direct) suspending or revoking the registration of any registered company or dismissing the application. If the order shall provide that such finance com-
[fol. 35] pany shall cease to be a registered finance company indefinitely, the finance company may, not less than six months thereafter, apply to the court for an order reinstating it as a registered finance company, and jurisdiction of this cause is reserved to grant or deny such application, or grant it upon such terms and conditions, if any, as the court may determine for the purpose of assuring further compliance with such finance company's sworn statement. Upon the entry of an order finding that a finance company has failed to comply with its sworn statement, as aforesaid, if the Manufacturer shall have made the application for such an order, or upon service upon the Manufacturer of a copy of said order certified by the Clerk of the Court if another party shall have made such application, the Manufacturer shall notify its dealers of the entry and the terms of such order and shall treat said company as a company that is not a registered finance company or as the order of the court may require.

8. Withdrawal of its sworn statement by a registered finance company and any order suspending or revoking the registration of any registered company or dismissing the application shall be applicable to all finance companies embraced by the sworn statement under clause (D) thereof.

9. Service of all papers hereinbefore required to be made upon the Manufacturer shall be made personally upon an officer of the Manufacturer, or by registered mail to the Manufacturer, at its principal office now located in Dearborn, Michigan.

10. Service of all papers upon a finance company pursuant to this decree shall be made personally or by registered mail addressed to it at its principal office as shown in its statement.

(k) The Manufacturer shall not recommend, endorse or advertise the Respondent Finance Company or any other finance company or companies to any dealer or to the public; provided, however, that nothing in this decree contained shall prevent the Manufacturer in good faith:

(1) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by the Manufacturer or from time to time withdrawing or modifying the same;

[fol. 36] (2) From recommending to its dealers the use of such plans;

(3) From advertising to the public and recommending the use of such plans.

1. The Manufacturer shall notify each finance company which makes written specific or continuing request therefor by registered mail, of every plan and modification thereof that the Manufacturer shall adopt. The notice shall set forth the provisions of the plan or modification and the date, not less than thirty days after the date of mailing the notice, upon which the plan or modification shall go into effect.

2. Nothing in this decree shall prevent the Manufacturer from obtaining such assurances as it may desire from one or more finance companies before or after adoption of any plan or modification that it or they will make such plan or modification available for at least a specified period of time; provided, however, that the Manufacturer may not give such finance company or finance companies, as consideration for such assurances, any consideration prohibited by this decree.

3. The adoption or modification of any plan under this subparagraph (k) shall not preclude any aggrieved finance company or any other aggrieved person who considers that such plan or modification constitutes an unreasonable restraint of trade or commerce in automobiles under the Sherman Anti-trust Law from applying to this court to vacate such plan, and the court reserves jurisdiction to make an order upon such application approving or vacating such plan, upon the execution of proper bond against damages for an order of vacation subsequently reversed or vacated.

(l) The Manufacturer shall not use any information obtained from any dealer, his agents, representatives, servants and employees, either directly by examination or inspection of his books or records, or through financial, operating or other statements or reports or otherwise, nor shall it require disclosure of any such information, for the purpose of influencing such dealer to patronize [fol. 37] Respondent Finance Company or any other finance company or group of finance companies. Nothing herein contained shall apply to the disclosure or use of any information at the dealer's written request or for the purpose of assisting the dealer, at his specific written request, to obtain wholesale or retail financing or special facilities or services from Respondent Finance Company or any other finance company designated by the dealer in such written request.

7. The Respondent Finance Company:

(a) Shall not represent in any manner to any dealer that the Manufacturer requires him to patronize Respondent Finance Company, or that his failure to do so will result in the cancellation or termination by the Manufacturer of his contract, franchise or agreement, or in the loss of any advantage, service or facility furnished by the Manufacturer, or that Respondent Finance Company can obtain from the Manufacturer any facility, service or privilege which is not available to any other finance company, except (if Respondent Finance Company is a registered finance company) such services, facilities or privileges as result from the registration of a registered finance company, under paragraph 6 of this decree;

(b) Until further order of this court pursuant to paragraph 8 hereof, shall pay to every dealer who ceases to do business with it the amount of all reserves standing to the credit of such dealer, less any off-setting indebtedness of such dealer, such payment to be made not later than thirty (30) days after liquidation of all of the retail paper acquired from such dealer, and shall comply with any provisions relating thereto contained in any further decree entered pursuant to paragraph 8 of this decree;

(c) Shall not enter into any contract, agreement or understanding with any dealer, in connection with wholesale

financing for which a separate charge is not made, which requires the dealer to deal with Respondent Finance Company in respect of retail financing of automobiles not financed at wholesale by Respondent Finance Company;

[fol. 38] (d) Shall not, except upon written request of the dealer or prospective dealer, arrange or agree with the Manufacturer that an agent of the Manufacturer and an agent of Respondent Finance Company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize Respondent Finance Company; provided, however, that it shall not be a violation of this decree for Respondent Finance Company by joint conference with a dealer or prospective dealer and a representative of the Manufacturer to agree to furnish to such dealer or prospective dealer, because of his financial situation or requirements, special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) and in part consideration of such special facilities or services to arrange for the dealer or prospective dealer to do business with Respondent Finance Company on an exclusive basis for such reasonable period of time as may be agreed between them.

8. In the event that a final decree not subject to further review is entered by a court of competent jurisdiction in any proceeding hereafter instituted by the United States against General Motors Corporation and General Motors Acceptance Corporation, granting relief to the Government against said corporations upon allegations substantially identical with the allegations in Paragraph 18 of Section III of the petition herein, then and in that event the court shall have jurisdiction to enter its supplemental decree herein granting such relief, if any, against the Respondent Finance Company, or any of them, with respect to the allegations of said paragraph of the petition, as justice may then require. Such proceeding shall be upon application of the United States and upon proper notice and opportunity for hearing to the respondents and the presentation of evidence (including evidence with re-

spect to the other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and evidence of the acts and practices of other finance companies and the volume of business done by them) relevant in determining the legality under the Sherman Anti-trust Law of the acts and practices of the Respondent Finance Company alleged in Paragraph 18 of [fol. 39] Section III of the petition and established before the court, considered in combination with any other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and established before the court, and relevant in determining what further decree, if any, is necessary in addition to this decree in order to require Respondent Finance Company thereafter to conduct its business in accordance with the Sherman Anti-trust Law in respect of the acts and practices alleged in said paragraph, reserving to each of the Respondent Finance Company the right to present all defenses in law or fact as to any of the matters tendered by the Government in such proceeding which would be open if this decree had not been entered, provided, however, that such supplemental decree shall be subject to review as fully as though entered as the final decree in an original non-jury action and shall be vacated upon motion of any party if not so reviewable.

9. The respondents shall not in combination or conspiracy do any act which this decree forbids or omit any act which this decree requires.

10. Upon complaint by the petitioner that any respondent has failed to comply with the provisions of the foregoing sub-paragraphs (e), (f), (i) and (l) of paragraph 6, or of sub-paragraph (d) of paragraph 7 of this decree, and the defense of such respondent that the act or acts complained of were not done for the forbidden purpose or purposes, the burden shall be upon such respondent to prove that the act complained of was done for a purpose not forbidden.

11. The Manufacturer shall mail a copy hereof to its dealers, regional and district managers and field representatives in the continental United States and Respondent Finance Company shall mail a copy hereof to its zone,

regional and branch managers in the continental United States; and said Manufacturer and Respondent Finance Company respectively shall within thirty (30) days after the entry of this decree file with this court an affidavit or affidavits showing the manner in which they severally shall have complied with this provision hereof.

12. The Respondent Finance Company shall not pay to any automobile manufacturing company and the Manufacturer shall not obtain from any finance company any money or other thing of value as a bonus or commission on account of retail time sales paper acquired by the finance company from dealers of the Manufacturer. The Manu- [fol. 40] facturer shall not make any loan to or purchase the securities of Respondent Finance Company or any other finance company, and if it shall pay any money to Respondent Finance Company or any other finance company with the purpose or effect of inducing or enabling such finance company to offer to the dealers of the Manufacturer a lower finance charge than it would offer in the absence of such payment, it shall offer in writing to make, and if such offer is accepted it shall make, payment upon substantially similar bases, terms and conditions to every other finance company offering such lower finance charge; provided, however, that nothing in this paragraph contained shall be construed to prohibit the Manufacturer from acquiring notes, bonds, commercial paper, or other evidence of indebtedness of Respondent Finance Company or any other finance company in the open market.

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered

pursuant to paragraph 12a. The court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

12a. It is a further express condition of this decree that:

(1) If the proceeding now pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, or any further proceeding initiated by reindictment of General Motors Corporation for the same alleged acts, is [fol. 41] finally terminated in any manner or with any result except by a judgment of conviction against General Motors Corporation and General Motors Acceptance Corporation therein, then and in that event every provision of this decree except those contained in this sub-paragraph (1) of this paragraph 12a of this decree, shall forthwith become inoperative and be suspended, until such time as restraints and requirements in terms substantially identical with those imposed herein shall be imposed upon General Motors Corporation and General Motors Acceptance Corporation and their subsidiaries either (a) by consent decree, or (b) by final decree of a court of competent jurisdiction not subject to further review, or (c) by decree of such court which although subject to further review continues effective. The court reserves jurisdiction upon application of any party to enter orders at the foot of this decree in accordance with the provisions of this paragraph.

(2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act or practice of General Motors Corporation which is the

subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purposes of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) [fol. 42] upon the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1041;

(3) After the entry of a consent decree against General Motors Corporation, or after the entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter orders:

(i) suspending each of the restraints and requirements contained in sub-paragraphs (d) to (f) and (h) to (l), inclusive, of paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in sub-paragraphs (a), (c) and (d) of paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent

decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to sub-paragraphs (j) and (k) of paragraph 6 of this decree are different from said sub-paragraphs of this decree, then upon application of the respondents any provision or provisions of said sub-paragraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

[fol. 43] (ii) suspending each of the restraints and requirements contained in the remaining sub-paragraphs (a), (b), (c) and (g) of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause (i) of clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining sub-paragraphs, and suspending each of the restraints and requirements contained in sub-paragraph (b) of paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said sub-paragraph (b) of paragraph 7;

(iii) Suspending the restraints of sub-paragraph (d) of paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of sub-paragraph (i) of paragraph 6 of this decree are suspended as to the Manufacturer.

(4) The right of the respondents or any of them to make any application for suspension of any provision of this

decree in accordance with the provisions of this paragraph and to obtain such relief is hereby expressly granted.

In the event that at any time prior to the date when General Motors Corporation has permanently divested itself of all ownership and control of and interest in General Motors Acceptance Corporation, General Motors Acceptance Corporation shall make available to dealers of General Motors Corporation in any area a finance charge, on all or any class of automobiles sold by dealers of General Motors Corporation, less than the finance charge then generally available to dealers of the Manufacturer within such area, nothing in this decree shall prevent the Manufacturer from making, and the Manufacturer may make, [fol. 44] adjustments, allowances or payments to or with all of its dealers in such area who agree to reduce to an amount approved by the Manufacturer (but not less than that then made available by General Motors Acceptance Corporation) the finance charges which such dealers of the Manufacturer in such area receive from any class of retail purchasers of automobiles, provided that such adjustments, allowances or payments shall not discriminate among such dealers in such area.

13. This decree shall not be pleaded in bar by the respondents in any action under the Anti-Trust laws instituted by the petitioner against them or any of them in this court or in a court in any other judicial district as to matters arising after the entry of this decree; provided, however, that this paragraph shall not apply to matters which are covered by this decree or which form a part of the cause of action herein or which are a continuance or repetition of acts or practices in which the respondents now engage which form a part of the cause of action herein.

14. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to make application to the court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof (including, without limitation, any modification upon application of the respondents or any of them required in order to conform this decree to

any Act of Congress enacted after the date of entry of this decree), for the enforcement of compliance therewith, the punishment of violations thereof, and the carrying out of the provisions of sub-paragraph (j) and (k) of paragraph 6 hereof, and the October, 1938, Term of this court is hereby extended indefinitely for such purposes.

15. It is hereby further provided that if it shall appear to the court upon application of any respondent that, (A) in any twelve (12) months' period after the date of entry of this decree, any present or future competitor of the Manufacturer other than General Motors Corporation or Chrysler Corporation shall have sold in the United States, or any State thereof, a quantity of automobiles that shall equal or exceed 25% of the automobiles sold by the Manufacturer in the United States or said State in said period, and (B) that such competitor is doing or engaging [fol. 45] in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them; as the case may be, by such competitor has resulted or threatens to result in placing the Manufacturer at a competitive disadvantage in the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.

It is hereby further provided that if it shall appear to the court upon application of any respondent that (A) in any twelve (12) months' period after the date of entry of this decree any present or future competitor of Re-

spondent Finance Company other than General Motors Acceptance Corporation of Commercial Credit Company shall have financed the retail sale of a quantity of automobiles in the United States or any State thereof that shall equal or exceed 25% of the automobiles the sale of which was financed by Respondent Finance Company in the United States or said State in said period, and (B) that such competitor is doing or engaging in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them, as the case may be, by such competitor has resulted or threatens to result in placing the Respondent Finance Company at a competitive disadvantage in financing the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence [fol. 46] by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.

16. Nothing in this decree shall limit the control by the Manufacturer of a subsidiary or limit the control by Respondent Finance Company of any subsidiary or affiliated company.

17. Whenever obligations are imposed upon the respondents by the laws or regulations of any state with which the respondents by law must comply in order to do business in such state, the court upon application of the respondents or any of them will from time to time enter orders relieving the respondents from compliance with any requirements of this decree in conflict with such laws

or regulations, and the right of the respondents to make such applications and to obtain such relief is expressly granted.

18. After four years after the date of the entry of this decree any respondent may apply to the court to vacate this decree or any supplemental decree entered pursuant to paragraph 8 hereof or to vacate or modify any provision thereof on the ground that the commission or omission of any of the agreements, acts or practices herein prohibited or required, under the economic or competitive conditions existing at the time of such application, does not constitute an unreasonable restraint of trade or commerce among the states in automobiles within the meaning of the Sherman Anti-trust Law as amended to the date of such application, regardless of whether or not such economic or competitive conditions are new or unforeseen. Jurisdiction of this cause is retained for the purpose of granting or denying such applications as justice may require and the October, 1938, Term of this court is [fol. 47] hereby extended indefinitely for such purpose and the right of the respondents to make such applications and to obtain such relief is expressly granted. The provisions of this paragraph are in addition to, and not in limitation of, the provisions of any other paragraph of this decree.

19. This decree shall have no effect with respect to respondents' acts and operations without the continental United States or to their acts and operations within the continental United States relating, exclusively, to acts and operations without the continental United States.

20. This decree shall go into effect one hundred and twenty days after the date of entry hereof, except as to the provisions of paragraphs 8, 11, and 12 hereof, which said paragraphs shall take effect as therein provided.

Thos. W. Slick, District Judge.

Dated: November 15, 1938.

[File Endorsement omitted.]

A true copy: Attest: Margaret Long, Clerk, by Margaret Long, Clerk.

[fol. 48] And afterwards, to wit, on the 21st day of December, 1940, the following further proceedings were had herein, to wit:

Come now the parties herein, and now file a stipulation with reference to modification of consent decree, which stipulation is approved and the final Decree in modification is entered by the Court, the stipulation and order of final decree in modification read in the words and figures following, to wit:

[fol. 49] IN UNITED STATES DISTRICT COURT

STIPULATION—Filed December 21, 1940

It is hereby stipulated and agreed by all the parties to this suit that the motion of the United States of America filed herewith for modification of the final decree filed November 15, 1938, shall be allowed and that the aforesaid final decree shall be modified with the result that the second paragraph of Section 12 therein shall read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

And it is further stipulated and agreed that except as thus modified the decree as previously entered shall stand in full force and effect.

The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their rights to be heard on the granting thereof.

Clifford B. Longley, Wallace R. Middleton, Attorneys for Ford Motor Company, James R. Fleming, United States Attorney for the Northern District of Indiana.

Phillip W. Haberman, Attorney for Universal Credit Corporation (A Delaware Corporation) Universal Credit Company (a Delaware Corporation); Commercial Investment Trust Corporation (A Delaware Corporation) Universal Credit Company (An Indiana Corporation) Universal Credit Company, Inc. (A New York Corporation) and Commercial Investment Trust, Inc. (A New York Corporation). Edmond J. Ford, Special Assistant to the Attorney General.

[fol. 50] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Civil No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION, et al., Defendants

DECREE—IN MODIFICATION—December 21, 1940

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree, and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing

to the Court that the allowance of such motion is just and equitable,

Now, therefore, it is ordered, adjudicated and decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 51] And it is further ordered, adjudicated and decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

By the Court:

Dated: December 21, 1940

(Signed) Thos. W. Slick—Judge

[fol. 52] And afterwards, to wit, on the 31st day of December, 1941, the following further proceedings were had herein, to wit:

Come now the parties herein, and now the Government files a motion for modification of decree and stipulation of parties for modification of decree, and *the court* now the Court grants the motion and the motion for modification, stipulation and Decree of Modification as modified read in the words and figures following, to wit:

[fol. 53] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S MOTION FOR MODIFICATION OF DECREE—

Filed December 31, 1941

Now comes the United States of America, through Edmond J. Ford, Special Assistant to the Attorney General, duly authorized, and moves that the second paragraph of Section 12 of the decree entered in this case as modified by decree of December 21, 1940, be further modified and changed by changing the words "on or before January 1, 1942" so that they will read "on or before January 1, 1943", and so that the whole of the second paragraph of section 12 will then read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seek-

ing a further extension of the time within which the aforesaid order or decree may be entered.

United States of America, by Edmond J. Ford, Special Assistant to the Attorney General, Its Attorney.

[fol. 54] IN UNITED STATES DISTRICT COURT

STIPULATION—Filed December 31, 1941

It is hereby stipulated and agreed by all the parties to this suit that the motion of the United States of America filed herewith for modification of the final decree filed November 15, 1938, as amended and modified by the decree of December 21, 1941, shall be allowed and that the aforesaid final decree shall be modified with the result that the second paragraph of Section 12 therein shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

And it is further stipulated and agreed that except as thus modified the decree as previously entered shall stand in full force and effect.

The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their rights to be heard on the granting thereof.

Clifford B. Longley, W. R. Middleton, Attorneys for Ford Motor Company, Alexander M. Campbell, United States Attorney for the Northern District of Indiana—By Luther M. Swygert, Asst. U. S. Atty.

P. W. Haberman, Attorney for Universal Credit Corporation (A Delaware Corporation) Universal Credit Company, (A Delaware Corporation): Commercial Investment Trust Corporation (A Delaware Corporation) Universal Credit Company (An Indiana Corporation) Universal Credit Company, Inc. (a New York Corporation) and Commercial Investment Trust, Inc. (a New York Corporation). Edmond J. Ford, Special Assistant to the Attorney General.

[fol. 55] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION, et al., Defendants.

Civil No. 8

DECREE IN MODIFICATION OF SECTION 12—December 30, 1941

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree, and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing to the

Court that the allowance of such motion is just and equitable.

Now, therefore, it is ordered, adjudicated and decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 56] And it is further ordered, adjudicated and decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

By the Court:

Dated: December 30, 1941 (Signed) Evan A. Evans, Judge.

[fol. 57] And afterwards, to wit; on the 31st day of December, 1942, the following further proceedings were had herein, to wit:

Come now the parties herein, and now the Government files a motion for modification of final decree and the final decree as modified, which motion is now granted by the court, by Decree, and the motion and Decree of modification of final decree and of the final decree as modified read in the words and figures following, to wit:

[fol. 58] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S MOTION FOR MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—Filed December 31, 1942

Now comes the United States of America, through Holmes Baldridge, Special Assistant to the Attorney General, duly authorized, and moves that the second paragraph of Section 12 of the decree entered in this case as modified by decree of December 30, 1941, be further modified by changing the words "on or before January 1, 1943" so that they will read "on or before January 1, 1944" and so that the whole of the second paragraph of Section 12 will then read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1944, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall

not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

United States of America, by Holmes Baldridge, Special Assistant to the Attorney General, its Attorney.

[fol. 59] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Civil No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION, et al., Defendants.

DECREE IN MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—December 31, 1942

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree, and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing to the Court that the allowance of such motion is just and equitable,

Now, therefore, it is ordered, adjudicated and decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1944, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Ac-

ceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 60] And it is further ordered, adjudicated and decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

By the Court:

Dated: December 31, 1942.

(Signed) Evan A. Evans, Acting Judge of the United States District Court, Northern District of Indiana.

[fol. 61] And afterwards, to wit, on the 7th day of January, 1943, the following further proceedings were had herein, to wit:

Come now the parties herein, and now file a stipulation for entry of decree in modification of final decree and of the final decree as modified, and the Court now grants said Decree, and the Decree in modification of final decree and of the final decree as modified read in the words and figures following, to wit:

[fol. 62] In United States District Court

Stipulation—Filed January 7, 1943

It is hereby stipulated and agreed by all the parties to this suit that the motion of the United States of America filed herewith for modification of the final

decree and of the final decree as modified, shall be allowed and that the aforesaid final decree as modified shall be modified further with the result that the second paragraph of Section 12 therein shall read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1944, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

And it is further stipulated and agreed that except as thus modified the decree as previously entered and modified shall stand in full force and *affect*, and that the foregoing modification of the aforesaid final decree and the entry of this order shall not serve or be held in any respect to waive, alter, abridge or change Section 18 of the decree or the rights of any respondent to make applications to the Court under Section 18 of said decree. The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their rights to be heard on the granting thereof.

Clifford B. Longley, Wallace Middleton, Attorneys for

Ford Motor Co. Alexander M. Campbell, U. S. Atty. for the Northern District of Indiana; By Luther M. Swygert, Asst. U. S. Atty.

R. W. Haberman, Attorney for Universal Credit Corp. et al, (heretofore listed on previous stipulations filed) Holmes Baldridge, Special Asst. to the Atty. Gen.

[fol. 63] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION, et al., Defendants.

Civil No. 8

DECREE IN MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—January 7, 1943

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree, and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing to the Court that the allowance of such motion is just and equitable,

Now, Therefore, it is Ordered, Adjudicated and Decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not

have been entered on or before January 1, 1944, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 64] And it is Further Ordered, Adjudicated and Decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

And it is Further Ordered, Adjudged and Decreed That the foregoing modification of the aforesaid final decree and the entry of this Order shall not serve or be held in any respect to waive, alter, abridge or change Section 18 of said final decree or the rights of any respondent to make any applications to the Court under Section 18 of said final decree.

By the Court:

Dated: January 7th, 1943

(Signed) Acting—Evan A. Evans, Judge of the U. S. District Court.

[fol. 65] And afterwards, to wit, on the 15th day of January, 1943, the following further proceedings were had herein, to wit:

Comes now the United States Attorney, Alexander M. Campbell, and comes also the defendant herein, and now

the Government files a motion to make the decree in modification of final decree and of the final decree as modified, signed January, 1943, effective as of December 31, 1942, which motion is granted by the Court, by an order and the motion and order read in the words and figures following, to wit:

IN UNITED STATES DISTRICT COURT

MOTION TO MAKE DECREE IN MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED, SIGNED JANUARY 7, 1943, EFFECTIVE AS OF DECEMBER 31, 1942—Filed January 15, 1943

Luther M. Swygert, Assistant United States Attorney for the Northern District of Indiana, respectfully shows to the Court that on December 31, 1942, he presented to this Honorable Court a petition for a decree in modification of the final decree and of the final decree as modified in the above entitled case; that upon said motion and stipulation of parties, a decree in modification of final decree and of the final decree as modified was entered on the said 31st day of December, 1942; further that thereafter another decree in modification of final decree was entered by this Court on January 7, 1943, which contained an additional paragraph which had been stipulated and agreed to by the parties hereto.

WHEREFORE, the United States of America, plaintiff herein, asks that the decree signed on January 7, 1943 be ordered to become effective as of December 31, 1942 and take the place of the order which was signed on the said December 31, 1942 as herein represented.

Dated this 15 day of January, 1943.

United States of America, Complainant, By Luther M. Swygert, Assistant U. S. Attorney for the Nor. Dis. of Ind.

[fol. 66] IN UNITED STATES DISTRICT COURT

ORDER TO MAKE DECREE IN MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED, SIGNED JANUARY 7, 1943, EFFECTIVE AS OF DECEMBER 31, 1942

Upon the petition of the complainant, United States of America, for an order to make the Decree in modification

of final Decree and of the final decree as modified signed by this Court on January 7, 1943, effective as of December 31, 1942 and to take the place of the order which was entered on the said December 31, 1942 pursuant to the petition to modify the final decree and of the final decree as modified filed herein by the complainant and the stipulation entered into by the parties hereto, said petition is now granted and

It is Ordered that the decree in modification of final decree and of the final decree as modified signed on the 7th day of January, 1943, be effective as of December 31, 1942.

It is Further Ordered that the decree in modification of final decree and of the final decree as modified signed on January 7, 1943, take the place of the decree in modification of final decree and of the final decree as modified which was entered on December 31, 1942.

Dated this 15th day of January, 1943.

Evan A. Evans, Acting Judge of the United States District Court for the Northern District of Indiana.

And afterwards, to wit, on the 30th day of December, 1943, the following further proceedings were had in the above entitled cause, to wit:

Come now the parties herein, and now the Government files a motion for modification of the final decree with affidavit attached, and file a stipulation of the final decree as modified, and the Court now grants said Decree, and the affidavit, stipulation and Final Decree as entered read in the words and figures following, to wit:

[fol. 67]. In United States District Court

Government's Motion for Modification of the Final Decree and of the Final Decree as Modified—Filed December 30, 1943

Now comes the United States of America, through Alexander M. Campbell, United States Attorney, and Holmes Baldridge, Special Assistant to the Attorney General, duly authorized, and moves that the second paragraph of Section 12 of the decree entered in this case,

as modified be further modified by changing the words "on or before January 1, 1944" so that they will read "on or before January 1, 1945", and so that the whole of the second paragraph of Section 12 will then read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1945, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

United States of America, by Holmes Baldridge,
Special Assistant to the Attorney General.

Alexander M. Campbell, United States Attorney.

[fol. 68] In United States District Court

Stipulation—Filed December 30, 1943

It is hereby stipulated and agreed by all the parties to this suit that the motion of the United States of America filed herewith for modification of the final decree and of the final decree as modified, shall be allowed and that the aforesaid final decree as modified shall be modified further with the result that the second paragraph of Section 12 therein shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1945, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

And it is further stipulated and agreed that except as thus modified the decree as previously entered and modified shall stand in full force and effect, and that the foregoing modification of the aforesaid final decree and the entry of this order shall not serve or be held in any respect to waive, alter, abridge or change Section 18 of the said decree or the rights of any respondent to make applications to the Court under Section 18 of said decree.

The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their rights to be heard on the granting thereof.

Clifford B. Longley, W. R. Middleton, Attorneys for Ford Motor Co., Alexander M. Campbell, U. S. Atty. Nor. Dis. of Indiana.

R. W. Haberman, Atty. for Universal Credit Corp. et al, (as copied heretofore on other stipulations) Holmes Baldridge, Spec. Asst. to Atty. Gen.

[fol. 69] STIPULATION

It is hereby stipulated among the parties signatory hereto, that since entry of the attached order has been agreed to by all parties by stipulation, it is satisfactory that the Honorable Luther Swygert, Judge of the District Court for the Northern District of Indiana, sign the attached order.

Clifford B. Longley, W. R. Middleton, Attorneys for Ford Motor Co. Alexander M. Campbell, United States Attorney for the Northern District of Indiana.

R. W. Haberman, Atty. for Universal Credit Corp., et al (as heretofore copied in other stipulations)
Holmes Baldridge, Special Asst. to Atty. Gen.

[fol. 70] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Civil No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION, et al., Defendants.

DECREE—IN MODIFICATION OF THE FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—December 30, 1943

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree, and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing to the Court that the allowances of such motion is just and equitable,

Now, therefore, it is ordered, adjudicated and decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1945, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 71] And it is further ordered, adjudicated and decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

And it is further ordered, adjudged and decreed that the foregoing modification of the aforesaid final decree and the entry of this order shall not serve or be held in any respect to waive, alter, abridge or change Section 18, of said final decree or the rights of any respondent to make any applications to the Court under Section 18 of said final decree.

By the Court: Luther M. Swygert, Judge of the U. S. District Court, Northern District of Indiana.

Dated: Dec. 30, 1943.

[fol. 72] And afterwards, to wit, on the 31st day of December, 1944, the following further proceedings were had in the above entitled cause, to wit:

Come now the parties herein, and now file a motion for modification of the final decree and of the final decree as modified, also file a stipulation herein, and the Decree in modification of the final decree and of the final decree as modified is entered and the motion, stipulation and Final decree herein read in the words and figures following, to wit:

[fol. 73] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S MOTION FOR MODIFICATION OF THE FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—
Filed December 31, 1944

Now comes the United States of America, through Alexander M. Campbell, United States Attorney, and Holmes Baldridge, Special Assistant to the Attorney General, duly authorized, and moves that the second paragraph of Section 12 of the decree entered in this case, as modified, be further modified by changing the words "on or before January 1, 1945," so that they will read "on or before January 1, 1946" and so that the whole of the second paragraph of Section 12 will then read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1946, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or

decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

United States of America, by Holmes Baldridge, Special Assistant to the Attorney General, Alexander M. Campbell, U. S. Atty.

[fol. 74] AFFIDAVIT IN SUPPORT OF MOTION FOR MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED

I, HOLMES BALDRIDGE, being duly sworn, do hereby make oath and depose as follows:

I have read the attached motion for modification of the final decree and of the final decree as modified in the above styled cause and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed.

Wherefore, I hereby make oath that the statements therein set forth are true. The sources of my information are original documents and facts learned in the handling of the matters referred to in the aforesaid motion as Special Assistant to the Attorney General of the United States.

Holmes Baldridge.

Sworn to and subscribed before me this 15th day of December, 1944. Dorothy J. Heale, Notary Public, District of Columbia. (seal)

[fol. 75] AFFIDAVIT IN SUPPORT OF MOTION FOR MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED

I, JAMES E. KEATING, an Assistant United States Attorney for the Northern District of Indiana and on behalf of the above named plaintiff, and for an- on behalf of Alexander M. Campbell, United States Attorney for the Northern District of Indiana, being duly sworn do hereby make oath and depose as follows:

I have read the attached motion for modification of the final decree and of the final decree as modified in the above styled cause and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed.

Wherefore, I hereby make oath that the statements therein set forth are true. The sources of my information are original documents and facts learned in the handling of the matters referred to in the aforesaid motion as an Assistant United States Attorney for the Northern District of Indiana.

James E. Keating.

Sworn to and subscribed before me this 30th day of December, 1944. Marie M. Shultz, Notary Public, St. Joseph Co. Ind. My comm. expires July 14, 1948 (seal)

[fol. 76] In United States District Court

Stipulation—Filed December 31, 1944

It is hereby stipulated and agreed by all the parties to this suit that the motion of the United States of America, filed herewith for modification of the final decree and of the final decree as modified, shall be allowed and that the aforesaid final decree as modified shall be modified further with the result that the second paragraph of Section 12 therein shall read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1946, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modifica

tion or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

And it is further stipulated and agreed that except as thus modified the decree as previously entered and modified shall stand in full force and effect, and that the foregoing modification of the aforesaid final decree and the entry of this order shall not serve or be held in any respect to waive, alter, abridge or change Section 18 of the said decree.

The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their rights to be heard on the granting thereof.

Clifford B. Longley, W. R. Middleton, Attorneys for the Ford Motor Company, Alexander M. Campbell, U. S. Atty. Nor. Dis. of Indiana.

R. W. Haberman, Atty. for Universal Credit Corp. et al (heretofore copied on other stipulations)
Holmes Baldridge, Spec. Act. to the Atty. Gen.

[fol. 77] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Civil No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION, et al., Defendants.

DECREE—IN MODIFICATION OF THE FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—December 31, 1944.

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree,

and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing to the Court that the allowance of such motion is just and equitable,

Now, therefore, it is ordered, adjudicated and decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1946, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 78] And it is further ordered, adjudicated and decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

And it is further ordered, adjudged and decreed that

the foregoing modification of the aforesaid final decree and the entry of this order shall not serve or be held in any respect to waive, alter, abridge, or change Section 18, of said final decree or the right of any respondent to make any application to the Court under Section 18 of said final decree.

By the Court: Luther M. Swygert, Judge.

Dated: December 31, 1944.

[fol. 79] And afterwards, to wit, on the 31st day of December, 1945, the following further proceedings were had in the above entitled cause, to wit:

Come now the parties herein, and now the United States files a motion for modification of the final decree and of the final decree as modified, together with an affidavit in support of said motion, whereupon an order is entered for hearing, which motion for modification, affidavit and order thereon, reads in the words and figures following, to wit:

[fol. 80] IN THE DISTRICT COURT FOR THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Civil Action No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, Defendant.

MOTION FOR MODIFICATION OF THE FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—Filed December 31, 1945

The United States of America, plaintiff in the above entitled action, by Alexander M. Campbell, United States Attorney for the Northern District of Indiana, and William C. Dixon, Special Assistant to the Attorney General of the United States, both acting under the direction of the Attorney General, represent and move as follows:

On November 15, 1938, a final decree was entered by consent in this case. The second paragraph of Paragraph 12 provided that if an effective final order or decree should

not have been entered by January 1, 1941, requiring General Motors Corporation to divest itself of all ownership and control of General Motors Acceptance Corporation, then nothing in the decree should preclude the manufacturer from acquiring and retaining ownership of, control over, or an interest in any finance company.

On December 21, 1940, this Court, on motion of plaintiff for modification of the final decree and on stipulation of the parties, entered an order modifying the second para- [fol. 81] graph of Paragraph 12 by changing the date therein set forth with respect to entry of an effective final order or decree against General Motors Corporation from January 1, 1941, to January 1, 1942.

On December 31, 1941, this Court, on motion of plaintiff for modification of the final decree and of the final decree as modified and on stipulation of the parties, entered an order modifying the second paragraph of Paragraph 12 of the decree by changing the date therein set forth with respect to entry of an effective order or decree against General Motors Corporation from January 1, 1942, to January 1, 1943.

On December 31, 1942, this Court, on motion of the plaintiff for modification of the final decree and of the final decree as modified on December 31, 1941, and on stipulation of the parties, entered an order modifying the second paragraph of Paragraph 12 of the decree entered in this case as modified by the decree of December 30, 1941, by changing the date therein set forth with respect to entry of an effective order or decree against General Motors Corporation from January 1, 1943, to January 1, 1944.

On January 7, 1943, this Court, on motion of the plaintiff for modification of the final decree and of the final decree as modified, and on stipulation of the parties, entered an order modifying the second paragraph of Paragraph 12 of the decree entered in this case, as modified by decree of December 31, 1942, by changing the date therein set forth with respect to entry of an effective final order or decree against General Motors Corporation from January 1, 1943, to January 1, 1944. The order of the court as entered on January 7, 1943, was on motion of the plaintiff, rendered effective as of December 31, 1942, and said modification of the final decree as modified by order of

this Court on January 7, 1943, took the place of the decree in modification of the final decree and of the final decree as modified theretofore entered by this Court on December 31, 1942.

[fol. 82] On December 30, 1943, on motion of the plaintiff for modification of the final decree and of the final decree as modified and on stipulation of the parties, this Court entered an order modifying the second paragraph of Paragraph 12 of the decree entered in this case as modified by decree of January 7, 1943, by changing the date therein with respect to entry of an effective final order or decree against General Motors Corporation from January 1, 1944, to January 1, 1945.

On December 31, 1944, on motion of the plaintiff for modification of the final decree and of the final decree as modified, and on stipulation of the parties, this Court entered an order modifying the second paragraph of Paragraph 12 of the decree entered in this case as modified by the decree of December 30, 1943, by changing the date therein with respect to entry of an effective final order or decree against General Motors Corporation to January 1, 1946.

The consent decree entered in this case contains numerous provisions, the effect of which is that while the various prohibitions of the decree are to be presently effective, the ultimately binding effect is to be dependent upon the outcome of certain proceedings by the plaintiff under the antitrust laws against General Motors Corporation and its subsidiary finance company, General Motors Acceptance Corporation, in the case of *United States* v. *General Motors Corporation, et al.*, Civil No. 2177, pending in the District Court of the United States for the Northern District of Illinois, Eastern Division. The consent decree was entered herein without submitting the issues raised by the proceeding against respondents to the test of litigation. The decree provides, in substance, that the plaintiff's litigation against General Motors Corporation shall be substituted for such test and that the prohibitions of the decree shall later be adjusted to accord with the adjudications made and the results achieved in the proceedings against General Motors Corporation.

[fol. 83] The primary purpose of the provisions of the decree relating to affiliation was to have the right of the

plaintiff to prohibit affiliation between an automobile manufacturer and a finance company, under the circumstances set forth in the complaint upon which the consent decree is based, determined by the outcome of proceedings by the plaintiff to terminate the existing affiliation between General Motors Corporation and General Motors Acceptance Corporation. A subsidiary purpose was to protect respondents against undue delay by the plaintiff in prosecuting such proceedings by providing a specified date for bringing them to a conclusion. Circumstances arising since the entry of the decree, not attributable to undue delay or laches by the plaintiff, have prevented bringing these proceedings to a conclusion by the date specified in Paragraph 12, or by the dates specified in Paragraph 12 as five times modified by this Court. The essential purpose of the decree would be defeated if, under these circumstances, the prohibition against affiliation were allowed to lapse prior to final determination of the plaintiff's proceeding to end the affiliation between General Motors Corporation and General Motors Acceptance Corporation. The plaintiff represents that it has proceeded with due diligence since the Court's order of December 31, 1944, extending the bar against affiliation to January 1, 1946, to procure a decree requiring General Motors Corporation to divest itself of ownership and control of General Motors Acceptance Corporation; that the entry of such a decree is dependent upon proving certain involved facts and establishing numerous disputed principles of law; that since the entry by this Court of the order of December 31, 1944, the plaintiff has been continuously engaged in the taking of depositions in its case against General Motors Corporation, at the instance and demand of the General Motors Corporation, throughout all sections of the United States; that approximately 220 depositions had been taken in the case by July 9, 1945, [fol. 84] and General Motors Corporation had indicated an intention at that time to take the depositions of approximately 200 additional witnesses.

The plaintiff, on July 9, 1945, in an effort to limit the taking of further depositions in order to bring said case to trial, filed a motion with the court in the General Motors case to vacate or to limit notices to take depositions by the General Motors Corporation in the General

Motors case, and said motion to restrict the taking of depositions on behalf of General Motors Corporation was heard by the court on July 17 and 18, 1945. No ruling has yet been made by the court on said motion, but the plaintiff and General Motors Corporation have endeavored by agreement to expedite and limit the taking of depositions in said case in the interest of bringing the General Motors case to trial at the earliest possible date.

Under Paragraph 14 of the consent decree in the instant suit, this Court retained jurisdiction of the cause for the purpose of enabling any party to apply to the Court at any time for modification of the decree and, aside from this provision, the Court inherently has the right to modify a decree, whether entered by consent or otherwise, as the ends of justice may require.

The plaintiff avers that it has exercised due diligence and will continue to exercise due diligence in securing an early trial date of the proceeding against General Motors Corporation and others now pending in the Northern District of Illinois, Eastern Division, but that said cause cannot be brought to final conclusion by January 1, 1947.

The plaintiff, therefore, moves that the second paragraph of Paragraph 12 of the consent decree in this case as modified five times by this Court be again modified effective as of January 1, 1946, in such manner that the words of said paragraph, to wit, "on or before January 1, 1946," be modified so as to read, "on or before January 1, 1947," or in the alternative, "on or before January 1, 1946," be modified so as to read, "until such time as the Government's civil action requiring General Motors [fol. 85] Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, shall have been finally disposed of by a court of last resort," with the result that said decree shall be so modified that the second paragraph of Paragraph 12 shall read as follows:

> "It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this Paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered *or* or before January 1, 1947, requiring

General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then in that event, nothing in this decree shall preclude the manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to Paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted."

Or, in the alternative, that said decree shall be so modified that the second paragraph of Paragraph 12 shall read as follows:

"It is an express condition of this decree that the bar against affiliation by the defendant manufacturer with any finance company shall continue in effect until such time as the proceedings now pending in the United States District Court for the Northern District of Illinois, Eastern Division, styled United States of America v. General Motors Corporation, et al., Civil No. 2177, have been disposed of by a court of final resort; provided however, that in the event the plaintiff fails to prosecute said suit to final conclusion expeditiously, defendants shall have the right, upon making proper showing to this Court, to acquire an interest in a finance company."

William C. Dixon, William C. Dixon, Special Assistant to the Attorney General.

Alexander M. Campbell, Alexander M. Campbell, United States Attorney.

[fol. 86] STATE OF INDIANA
County of Lake, ss.:

James E. Keating being first duly sworn upon his oath says that he is an assistant United States District Attorney in and for the Northern District of Indiana, and as such makes this affidavit for and on behalf of the above mentioned plaintiff and that a copy of the above and foregoing motion was mailed to Clifford B. Longley, 1400 Buhl Building, Detroit, Michigan, on December 29, 1945, and that the said Clifford B. Longley is an attorney for the above mentioned defendant.

James E. Keating

Subscribed and sworn to, before me, the undersigned, this 31st day of December, 1945.
Adele Anderson, Deputy Clerk, United States District Court for the Northern District of Indiana.

[fol. 87] IN THE DISTRICT COURT OF THE UNITED STATES

AFFIDAVIT IN SUPPORT OF MOTION FOR MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—
Filed December 31, 1945

I, William C. Dixon, being duly sworn, do hereby make oath and depose as follows:

I have read the attached Motion for Modification of the Final Decree and of the Final Decree as Modified in the above-styled cause and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed.

Wherefore, I hereby make oath that the statements therein set forth are true. The sources of my information are original documents and facts learned in the handling of the matters referred to in the aforesaid motion as Special Assistant to the Attorney General of the United States.

William C. Dixon

Sworn to and subscribed before me this 28th day of December, 1945. Nellie E. Bishop, Notary Public, District of Columbia.

[fol. 88] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Civil Action No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, Defendant.

ORDER FOR HEARING—Filed December 31, 1945

The plaintiff, United States of America, in the above entitled cause, having filed its motion for modification of Final Decree and Final Decree as modified herein and having applied for a hearing on said motion.

The court now, pursuant to the provisions of Section 6(d) of the Rules of Civil Procedure, for the causes shown in said application sets said hearing of said motion for modification of final decree for 2:00 o'clock P. M., Monday, February 11, 1946, in the United States District Court Room located at South Bend, Indiana, and further

Orders that notice of said hearing be immediately mailed by the plaintiff to counsel for the defendant.

And the undersigned having heretofore acted as one of the counsel for and on behalf of the United States of America prior to becoming judge of the above designated court, after having set the time for a hearing on the above described motion, herewith disqualifies himself from acting further in the above entitled cause.

Luther M. Swygert, Judge

December 31, 1945, Hammond, Indiana.

[fol. 89] IN UNITED STATES DISTRICT COURT

ORDER OF APPOINTMENT—Filed January 10, 1946

Public interest requiring, I hereby designate and assign the Honorable Patrick T. Stone, United States District Judge for the Western District of Wisconsin, to hold United States District Court in the Northern District of Indiana for thirty days beginning January 22, 1946, and for such further time as may be necessary to dispose of

business undertaken during the above named designated period and pending at the end of said period.

Evan A. Evans, Senior United States Circuit Judge in and for the Seventh Judicial Circuit.

Chicago, Illinois, January 9, 1946.

[fols. 90-91] In United States District Court

Order—February 6, 1946

James E. Keating, Assistant United States Attorney for the Northern District of Indiana, having represented to this court that a ninety day extension of time is necessary in order to enable counsel for the respective parties above designated to formulate their issues, wherein the plaintiff seeks a further extension of time on the bar against affiliation of the Ford Motor Company with certain finance companies, and a hearing on a petition to that effect having been heretofore set to be heard by the undersigned on February 11, 1946, the said hearing is herewith continued to May 13, 1946, and at that time the said hearing shall be had in the United States District Court at Hammond, Indiana at 2:00 P.M.

Patrick T. Stone, Judge, U. S. District Court, Northern District of Indiana.

Dated: February 6, 1946.

[fols. 92-93] In United States District Court

[File endorsement omitted.]

[Title omitted.]

Response of Respondent, Ford Motor Company, to Motion of Government for Extension of Time of Bar Against Affiliation—Filed May 4, 1946

Now Comes Respondent, Ford Motor Company, by its attorneys, Clifford B. Longley and Wallace R. Middleton, and states that it is opposing the motion of the United States in the above entitled cause for an extension of time on the bar against affiliation of this Respondent with certain finance companies and for the grounds of such opposition refers to and incorporates herein, as though set forth herein at length, the matters alleged in its own

motion filed in this cause for the entry at the foot of the decree in this cause of an order or decree permitting this Respondent to acquire a finance company.

Clifford B. Longley (sgd) Wallace R. Middleton, 1400 Buhl Building, Detroit, Michigan, Attorneys for Respondent, Ford Motor Company

Received copy of the above instrument this 4 day of May, 1946.

James E. Keating Attorney for United States of America

[fol. 94] IN UNITED STATES DISTRICT COURT

[Title omitted.]

NOTICE OF MOTION—Filed May 4, 1946

To: Alexander *N.* Campbell, United States Attorney for the Northern District of Indiana, South Bend, Indiana. Wendell Berge, Assistant Attorney General, Department of Justice, Washington, D. C.

To: Scheer, Scheer & Taylor, 408 Oddfellows Building, South Bend, Indiana. Samuel S. Isseks, 30 Broad Street, New York, New York. Alphonse A. Laporte, One Park Avenue, New York, New York. Attorneys for Respondents Commercial Investment Trust Corporation, et al.

Please Take Notice that at the United States Courthouse in the City of Hammond and State of Indiana, or such other place as the court may assign, at ten o'clock in the forenoon of May 20, 1946, or as soon thereafter as counsel can be heard, the attached motion of the Respond-
[fol. 95] ent, Ford Motor Company, will be brought on for hearing.

(sgd.) Clifford B. Longley (sgd.) Wallace R. Middleton, 1400 Buhl Building, Detroit, Michigan, Attorneys for Respondent, Ford Motor Company.

Crumpacker, May Carlisle & Beamer, 811 J.M.S. Bldg., South Bend, Indiana.

Received copy of the above instrument this 4 day of May, 1946.

James E. Keating, Attorney for United States of America.

[fol. 96] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO SUSPEND AND MODIFY PROVISIONS OF CONSENT DECREE—Filed May 4, 1946

Respondent, Ford Motor Company, a Delaware corporation, by its attorneys, Clifford B. Longley and Wallace R. Middleton, moves,

A. That the provisions of subparagraphs (i) and (k) of paragraph 6 of said decree be suspended until they shall be imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, that subparagraph (e) of paragraph 6 of said decree be modified to permit Respondent to recommend, endorse or advertise any plan or finance company to any dealer or the public either in conjunction with or independently of any finance company, until the terms of said subparagraph (e) without such modification shall be imposed upon General Motors Corporation and its subsidiaries, and that the provisions of subparagraph (d) of paragraph 7 of said decree be suspended until they shall be imposed in substantially identical terms upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review, or (z) by decree of such court, which, although subject to further review, continues effective; and

[fol. 97] B. That an order be entered pursuant to paragraph 12 of said decree that nothing therein shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in said decree or in any order of modification or suspension thereof; and

C. That the Court grant such other or further relief as may be proper.

The reasons why this relief should be granted are hereinafter set forth.

I. Reasons why relief prayed for in paragraph A above should be granted.

1. Paragraph 12a of said decree, referring to a proceeding then pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, provides in part as follows:

"(2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act or practice of General Motors Corporation which is the subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purposes of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) upon the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1041;

[fol. 98] "(3) After the entry of a consent decree against General Motors Corporation, or after the

entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter order;

(i) suspending each of the restraints and requirements contained in sub-paragraphs (d) to (f) and (h) to (l) inclusive, of paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in sub-paragraphs (a), (c) and (d) of paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to sub-paragraphs (j) and (k) of paragraph 6 of this decree are different from said sub-paragraphs of this decree, than upon application of the respondents any provision or provisions of said sub-paragraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

(ii) suspending each of the restraints and requirements contained in the remaining sub-paragraphs (a), (b), (c) and (g) of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause

(i) of clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining sub-paragraphs, and suspending each of the restraints and requirements contained in sub-paragraph (b) of paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said sub-paragraph (b) of paragraph 7;

(iii) suspending the restraints of sub-paragraph (d) of paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of sub-paragraph (i) of paragraph 6 of this decree are suspended as to the Manufacturer.

(4) The right of the respondents or any of them to make any application for suspension of any provision of this decree in accordance with the provisions of this paragraph and to obtain such relief is hereby expressly granted."

[fol. 99] 2. A judgment of conviction was entered against General Motors Corporation in such proceeding in 1939 and such judgment of conviction was preceded by a general verdict of guilty returned against General Motors Corporation in such proceeding.

3. A copy of the instructions of the trial court to the jury in such proceedings is hereto attached and made a part hereof as though set forth herein at length. It is apparent from such instructions that the trial court held therein that the only agreements, acts or practices of General Motors Corporation constituting a proper basis for the return of a general verdict of guilty were those which coerced General Motors dealers to finance retail sales of cars with a company with whom they would not have done such financing had they been free of such coercion. This

necessarily follows from the following language contained in the instructions (on pages 5986 and 5987):

> "In other words, the Government has no right to complain, and it may not complain of the defendants' rights to limit its sales of cars to persons whom it may select, its right to determine who it shall sell to, its rights to determine upon what terms it will sell, its right to pick its own dealers.
>
> It can only complain if the defendants do sufficient of these acts charged in the indictment as constitute duress upon the dealer to accomplish a result that would have otherwise not have been accomplished, and to make a dealer do something that he would not have done of his own free will.
>
> That almost, is the question in this case—whether the dealer could act as a free man; whether he could act of his own free will.
>
> The defendants say: 'We never imposed any restrictions upon that freedom of action.'
>
> The Government says it did and there is that question. If it did—if the defendants did that sort of thing—and if it resulted in an unreasonable restriction and unreasonable restraint of interstate commerce, then you would have a right to find them guilty.
>
> If they did not do it, this lawsuit is at an end, and that is a question which you have got to decide."

In other words, the court, by saying: "if they did not do it, this lawsuit is at an end", said that the only questions in the case were whether there was coercion on the dealer and such coercion resulted in an unreasonable restraint of interstate commerce and trade.

[fol. 100] There is nothing in the instructions to the jury from which it can be concluded that the conduct enjoined in subparagraphs (i) and (k) of paragraph 6 and subparagraph (d) of paragraph 7 of said decree and performed by General Motors Corporation was held by the trial court to constitute a proper basis for the return of a general verdict of guilty.

On the contrary, the trial court in its instructions to the jury in such proceeding against General Motors Corporation made the following affirmative statements:

"It is not unreasonable for the General Motors Company to have a finance company. * * * They have a perfect right to have a finance company and to recommend its use."

"It is not charged here that to recommend the use of General Motors Acceptance Corporation there is anything wrong."

"You know you have heard of the terms: exposition; persuasion; argument; coercion.

They are different steps. They are graduated steps that I suppose every salesman goes through, except perhaps the last.

In exposition one may expound the merits of that which he has to sell; he may explain its nature and by his exposition make a clear picture of what he has.

By persuasion he may endeavor to persuade the person to whom he is talking to accept that which he has to offer.

There is little advancement in his further progress, to argue.

Persuasion means something softer than argument, perhaps, but he may argue with him and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer.

All of these are proper. He may not go beyond that and use something that is within his power to use as a club to coerce the person to accept that which he has to offer."

"I think I said to you that the defendants may expound the alleged advantages of General Motors Acceptance Corporation; they may explain fully the characteristics of its operations, as they claim they exist, they may point out the advantages; they may expound all of those things; they may persuade; they may use persuasion in their conversations, in their communications with their dealers; they may even argue. These things are all proper. They have a right, as I have said, to determine to whom they shall sell their automobiles and to whom they shall not. Those things constitute no violation of the law."

"* * * and the charge in this indictment is, that this coercion, this misuse that has proceeded, accord-

ing to the indictment beyond exposition, persuasion and argument, has resulted in a situation where the commerce in General Motors Corporation, the products of General Motors, from state to state, has been unreasonably restricted and restrained."

[fol. 101] 4. Even the Department of Justice has admitted that, at least as of the time of the entry of the decree (and nothing has happened since to alter the facts or the law), the injunction against advertising in subparagraph (k) of paragraph 6 of said decree went beyond the provisions of the Anti Trust Law:

(a) Thurman Arnold, then Assistant Attorney General, in the release dated November 7, 1938, identified below, referred to the provisions of the decree prohibiting advertising and said:

> "Such a method of advertising has never been held to be violative of the antitrust laws, and the legality of its use, in the absence of positive fraud, has not been questioned."
>
> "There are no precedents which compel the adoption of such restrictions on advertising."

(b) Holmes Baldridge, Special Assistant to the Attorney General, stated on page 13 of the stenographic minutes referred to below:

> "It is the Department's idea, the one with respect to advertising, the other with respect to adoption of a Code of Fair Competition, that this public benefit goes far beyond anything that we could hope to accomplish in a litigated case, besides eliminating the discriminatory practices and coercion complained of by the independents in this suit."

5. No consent decree or other decree of a court of competent jurisdiction has ever imposed upon General Motors Corporation or its subsidiaries, either in substantially identical terms or otherwise, any of the restraints and requirements contained in subparagraphs (i) and (k) of paragraph 6 of the decree in this cause nor has a decree of either type ever imposed upon General Motors Acceptance Corporation or its subsidiaries, either in substantially identical terms or otherwise, any of the re-

straints and requirements contained in subparagraph (d) of paragraph 7 of the decree in this cause.

6. It is, therefore, clear that pursuant to the terms of the decree respondents have not only the right to apply for the relief prayed for in paragraph A above but also the right to obtain such relief.

[fol. 102] 7. The purpose of paragraph 12(a) was recognized by the Department of Justice at the time of the entry of the decree:

(a) Robert H. Jackson, then Assistant Attorney General, in a letter to Henry M. Hogan, Assistant General Counsel of General Motors Corporation, dated November 29, 1937, and which may be found in the "Hearings Before the Committee on the Judiciary of the House of Representatives" dated January 25, 1938, wrote in part as follows:

> "The decree will also contain provisions designed to protect the defendants from competitive disadvantages which they may experience in the event that the restrictions contained in the decree are not applied to their competitors."

(b) Thurman Arnold, the then Assistant Attorney General, in a letter to Phillip W. Haberman, Counsel for the Comercial Investment Trust Corporation, dated November 5, 1938, stated in part as follows:

> "I have told you throughout our conferences that the position of the Department of Justice is that no decree under the Sherman Antitrust Act should be such as to place the defendants at a competitive disadvantage in the industry, and that the Government's policy is to enforce the antitrust laws so as to restore and maintain free competition in the industry in which such decrees are entered."

(c) Holmes Baldridge, Special Assistant to the Attorney General, and Thurman Arnold stated at pages 15 and 16 of the stenographic minutes of the hearing before Hon. Thomas W. Slick, United States District Judge for the Northern District of Indiana, at the time the final decree was submitted:

"Mr. Baldridge——

Paragraph 12 states what we might designate as so-called estoppel clause; provided that, neither the Ford nor Chrysler decrees shall continue to be effective in the event of failure to convict General Motors and the General Motors Acceptance in the trial of the Criminal Cause. That provision was put in for this reason, if the Department is unable to stop these alleged discriminations and coercion, against General Motors, it would place Ford and Chrysler, who have agreed to give them up, at a decided distinct disadvantage, so that the effectiveness of this decree is made contingent upon the conviction of the General Motors and the General Motors Acceptance. The decrees will become effective one hundred twenty days after entering, but the effectiveness of both will be discontinued in the event of failure to convict the General Motors and General Motors Acceptance Company."

• • • •

[fol. 103] "The Court: I wonder what possible effect that might have on the prosecution of the other defendants, to say: this shall not be effective unless you convict certain other defendants?

"Mr. Arnold: We had to do that in order to prevent the General Motors securing a competitive advantage over the other companies. They are highly competitive; they have cars in the same price-class, and, if General Motors can continue with the practices that the Government is opposed to, when the Ford and Chrysler must desist, it places them at a distinct competitive advantage over their competitors."

(d) Thurman Arnold, in a public statement approved by Homer Cummings, the Attorney General, pointed out at page 11 of a release of the Department of Justice dated November 7, 1938, and published by the United States Government Printing Office:

"General Motors has not proposed an acceptable plan for a consent decree, and therefore the case against that group must be vigorously prosecuted. In the meantime the voluntary decrees proposed by

Chrysler and Ford will go into effect, if accepted by the Court. However, the failure of General Motors to participate has made it necessary to insert provisions in the decrees insuring the Ford and Chrysler groups that General Motors will not be put on a favored basis in the event that the prosecution against it is unsuccessful. To do otherwise might enable General Motors to enjoy an unwarranted competitive advantage over Ford and Chrysler resulting from the voluntary cooperation of the latter companies with the Government. Obviously, in view of the predominant position in the automobile field occupied by these three companies, the Department cannot restrain two of them only, unless it subsequently succeeds in securing relief against the practices of the third."

8. The decree, however, was so framed that no showing of competitive disadvantage would be required as a condition to the granting of relief therein provided, and no such showing should be required by the court. It is none the less true, however, that respondent is being placed at a competitive disadvantage by the provisions of subparagraphs (i) and (k) of paragraph 6 of the decree and by subparagraph (e) of paragraph 6 to the extent that it also enjoins the matters covered by said subparagraphs (i) and (k).

[fol. 104] This competitive disadvantage arises out of the failure of the decree to provide respondent with adequate means to protect its goodwill, while companies not so enjoined are not similarly handicapped.

No person has the right to hold out to the public that he is an authorized dealer of respondent except by the express permission, grant or franchise of respondent. Such franchise is granted in respondent's sales agreements with its dealers and as a result dealers holding this franchise are empowered to represent to the public that they are authorized dealers selling genuine Ford cars and parts. This representation is accomplished by the use of respondent's trade mark, the display of authorized signs, and the publication of advertisements containing the script word "Ford" and the designation "Authorized Sales and Service".

Respondent has the right to limit the use of its trade

mark to dealers who are competent and enjoy good business reputations. This right is zealously guarded, for it is one of the principal means which is available to respondent to protect its goodwill. The protection of this right, by prompt prosecution of those who display the trade mark without authority and by the withdrawal of the franchise of dealers that do not live up to the standards it implies, has enhanced the value of the right and induced the public to attach increasing significance to it. For these reasons, the public assumes that such dealers are selected by respondent and that the business conducted on the premises is done in accordance with standards which are approved by respondent.

The financing of a purchase is an important part of each sale. If the customer does not spontaneously suggest a particular finance company, the dealer will propose one or, worse yet, make out the papers for a particular company without discussing the point at all. In the light of the circumstances discussed above, it is only natural that, if any part of such a transaction originating on premises displaying respondent's trade mark should turn out to the customer's disadvantage, the customer will feel that there has been some relaxation of the standards attached to the use of such trade mark.

[fol. 105] Respondent needs the relief prayed for in this motion so that it can try to persuade its dealers to patronize finance companies whose participation in transactions originating on the dealers' premises will not imply any such relaxation of standards and so that it can advertise plans of financing and particular finance companies. It feels that such advertising will in a large measure counteract any tendency of retail purchasers to attribute unfortunate experiences arising from the use of plans or companies not so advertised to a deterioration in the significance of respondent's trade mark.

9. Under the language of the trial court in its instructions to the jury in the General Motors criminal case, General Motors is free to recommend, endorse and advertise plans of financing and a particular finance company and can visit a dealer in the company of representatives of such finance company in order to persuade the dealer to patronize that finance company. General Motors Corporation, therefore, has means to protect its good will which are not available to this respondent.

The effect of the decree has therefore, in respondent's opinion, been the loss of some of the good will which it enjoyed before the decree was entered and the consequent loss of sales by this respondent to other car manufacturers who have not been bound by the provisions of a similar decree. The percentage of car sales by this respondent to total car sales by all manufacturers throughout the United States has declined since the entry of said decree and respondent attributes this decline in part to the effect of the decree.

10. This relief has not been as necessary during the last few years as it is right now. During the war no cars have been sold to the public at large and as a result no such problems have existed. Now, however, there is a large backlog of customer demand, supported by an unprecedented amount of purchasing power, and the competition for this business among automobile [fol. 106] manufacturers is more aggressive than ever. In addition, a new manufacturer has entered the field with a large amount of capital. Most of these competitors are not burdened with the onerous restrictions imposed by this decree, and it looks as though they never would be burdened therewith. It is therefore considered unfair and inequitable for this court to continue in effect all these prohibitions and requirements that actually go beyond the requirements of the Sherman Anti-Trust Law.

II. Reasons why relief prayed for in paragraph B above should be granted.

1. The second paragraph (unnumbered) of paragraph 12 of the decree in this cause provides as follows:

> "It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest

in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted."

2. The date, January 1, 1941, in such paragraph has been extended by orders of this court to January 1, 1946. A motion by the government for a further extension to January 1, 1947 is now pending before this court. Such further extension is being opposed by this respondent and this motion is being made by respondent for an order pursuant to the above quoted language of the decree that nothing therein contained shall preclude Respondent from acquiring and retaining ownership of and/or control over or interest in any finance company or from dealing with such finance company and with the [fol. 107] dealers in the manner provided in this decree or in any order of modification or suspension thereof.

3. Under the terms of the decree, the lapse of the bar against affiliation is automatic unless it is extended by consent of the respondents. Extension by consent has been effected through January 1, 1946. But respondents have not consented to any further extension thereof and in the absence of such consent the decree is clear that the injunction ceases and that the respondents have a right not only to apply for but also to *obtain* an order or decree to that effect at the foot of the previous decree.

4. No showing of undue delay in the prosecution by the Government of its civil case against General Motors Corporation is required nor is any showing of competitive disadvantage to respondents as a result of the continuation of the bar against affiliation necessary, in order to entitle respondents to the relief prayed for. However, it is clear that there has been undue delay in such prosecution and that respondents are at a competitive disadvantage as a result thereof.

5. The consent decree was entered in this case on November 15, 1938. Seven years and five months have passed since then and the General Motors civil case has apparently not yet gone to trial. In the meantime, the greatest war this world has ever suffered has been commenced, fought and completed. This by itself is undue delay, whoever or whatever may have caused it.

6. Respondent is placed at a real competitive disadvantage by its inability to acquire a finance company. This disadvantage arises from several causes among which are the following:

(1) Respondent can not offer to the dealers a plan of financing which it considers more satisfactory from the point of view of sales appeal and particularly from the point of view of selling Respondent's own products. The financing of the retail sales of automobiles is an integral part of the sale, one of the factors which the customer [fol. 108] takes into consideration in determining what kind of a car he is going to buy. If for example, he is in doubt as to whether to buy one of Respondent's cars or the car of a competitor of Respondent, he may be persuaded to buy the car of the competitor because he likes the financing plan offered by the dealer in that car better than he likes that offered by Respondent's dealer. If General Motors Corporation feels that the plans offered by existing finance companies do not have sufficient sales appeal or are not particularly adapted to promote the sale of General Motors products, then General Motors Corporation through General Motors Acceptance Corporation can offer, advertise and recommend to its dealers and the public a plan which supplies the sales appeal considered lacking in the plans offered by other finance companies. Respondent is not able to do this. Its dealers have to choose between the plans that are offered by existing finance companies. These finance companies finance all makes of cars and their plans are not particularly adapted to the sale of Respondent's products. Respondent feels that it could offer through a finance company which it owned and controlled a plan of financing better adapted to the sale of its products and it feels that its inability to do this in the past has resulted in the loss of sales evidenced by the decrease in the percentage of cars sold by this Respondent to all cars sold by all automobile manufacturers.

(2) In order for an automobile manufacturer to sell cars it is necessary for him to have a large number of dealers. The competition between automobile companies to obtain dealers is always energetic and aggressive. The company which is able to offer to its dealers special financial assistance is often in a better position to obtain dealers than one which is not able to offer this assistance. General Motors Corporation through General Motors Acceptance Corporation is in a position to extend to dealers working capital loans which are more generous and timely than similar loans made available by other finance companies and banks. This Respondent because it does not have such a finance company is not in a position to do this. Nor is it in a position to absorb the entire cost of floor planning new [fol. 109] cars and trucks for its dealers while General Motors Corporation through General Motors Acceptance Corporation can do so. This constitutes a serious handicap to this Respondent in the market for new dealers.

7. Respondent is therefore confronted with the necessity of taking some steps to overcome this competitive disadvantage. To do this, respondent may have to acquire at least a controlling interest in an existing finance company or organize a new company. Respondent does not feel that it should be asked to determine what course of action it intends to follow until this injunction has been terminated. The acquisition of a controlling interest in an existing finance company might be effected by the purchase from time to time of outstanding stock in that company. Respondent does not feel that it should be placed in the position of having to say to the court now or at any future time that it has determined what it desires to do and wants to be free to proceed. That statement alone would hamper its efforts to buy into a company at a normal market price. Furthermore, if the court decided that respondent were not entitled to this relief until such time as it could tell the court that it had definite plans, it would be in the position of having to adopt a plan and then await a decision of the court and possibly an appeal, which would probably take many months, before it could proceed with the execution of the plan. In the meantime circumstances might change so that respondent would have to alter its plan. Paragraph 12 of the decree was prepared as it was because of these very considerations. It was not

contemplated then that respondent would have to disclose its plans before the relief provided therein would be granted. The relief should, therefore, be granted without such disclosure.

(sgd.) Clifford B. Longley, Clifford B. Longley;
(sgd.) Wallace R. Middleton, Wallace R. Middleton, 1400 Buhl Building, Detroit, Michigan, Attorneys for Respondent, Ford Motor Company.

[fol. 110] INSTRUCTIONS IN GENERAL MOTORS CASE

The Court: Gentlemen of the Jury:

You have sat for some five weeks in the trial of this cause and I congratulate you upon the care with which you have listened, the attention you have given to the witnesses and to counsel and to the Court in the conduct of the trial.

Unfortunately, you have been called from your homes and your vocations, but under our system of jurisprudence, as I said to you in the beginning, the Jury is the one essential element of this agency of the Government which can fulfill the purpose of that agency for, after all, you are, as both counsel have said to you, the sole judges of the facts in this cause.

We have preserved in this country the institution of the jury trial, an institution which has come to us through a thousand years of development of Anglo-Saxon jurisprudence, and under that system the jury are the triers of the facts; and, as I said to you in the beginning, being triers of the facts and endeavoring to administer the law properly as given to you by the Court, and applying the facts thereto, discharging that essential obligation, it is [fol. 111] absolutely essential, if we are to have the kind of administration of law that we should have, that you should be inspired by no motives other than the desire to reach, so far as humanly possible, the truth in the case. That, and that alone, is your task.

No question of politics, no question of church, no question of religion, no question of affiliation with one group of citizens or lack of affiliation, no question of spite, fear, or favor, or prejudice, or sympathy must be permitted to enter into your decision in this case.

As I said to you in the beginning, and again I repeat to you, that you may not lose sight of that essential duty upon your part, that essential standard of conduct, in reaching a decision.

You have been fortunate in the fact that this case has been tried by gentlemen and they have been gentlemen in every sense of the word. The trial has moved along expeditiously and you might have undergone much more unfortunate experience in that respect.

This indictment was returned, Gentlemen of the Jury, on May 7, 1938. It charges that the Defendants entered [fol. 112] into a conspiracy to restrain unduly interstate commerce in General Motors automobiles. That indictment grows out of a clause in our Constitution which gives to the Federal Government jurisdiction over interstate commerce and, obviously, interstate commerce is commerce that passes from one State to the other, and the Congress which determines the policy of legislation, and with the policy of legislation the courts have nothing to do and you have nothing to do; but Congress, acting within its province in determining policy or legislation, has indicated many years ago this statute, under this provision in our Federal Constitution, and that statute provides in Section 1 that every contract or combination or conspiracy in restraint of trade or commerce among the several States or with foreign nations is hereby declared to be illegal.

The Supreme Court of the United States many years ago said that that meant, that to constitute such violation of the law, the restraint must be unreasonable in character, otherwise the Court concluded that the statute would be largely meaningless; so, consequently, we can read the statute as if it were written that every conspiracy in [fol. 113] unreasonable restraint of trade or commerce among the several States is illegal.

Section 8 provides that the word "person" or "persons", wherever used in this Act, shall be deemed to include corporations and associations existing under or by virtue of law; and

Section 14 provides whenever a corporation shall violate any of the articles and provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation

who shall have authorized or done any of the acts constituting in whole or in part such violation.

Under those sections this indictment is brought against four corporations: The General Motors Corporation, the General Motors Sales Corporation, the General Motors Acceptance Corporation, and the General Motors Acceptance Corporation of Indiana.

In addition, there are seventeen individuals who are indicted. There were originally nineteen, but this indictment has been dismissed as to two. I think there was the suggestion of death as to one—perhaps not—but, at least, you are no longer concerned with the persons named in the indictment under the names of Arthur B. Purvis [fol. 114] and E. W. Berger. Those two individuals you have no concern with.

The Defendants with whom you are concerned, who are individuals, are George F. Benkhart, M. E. Coyle, James D. Deane, Nelson C. Dezendorf, August Freise, Richard H. Grant, Roy Hill, W. E. Holler, W. F. Hufstader, H. J. Klingler, William S. Knudsen, Russell Lesher, Ralph W. Moore, W. J. Mougey, John J. Schumann, Jr., Alfred P. Sloan, Jr., and G. I. Smith.

So this indictment was brought, as I said, was returned by the Grand Jury on May 7, 1938. It is divided into a great many paragraphs, I am not going to read it to you, but I am going to summarize it as well as I can.

The first 27 paragraphs set out a general background of the methods used in getting cars from the manufacturer to the ultimate purchaser, including the number of cars manufactured and sold, the place of manufacture, the method of sale to the dealers, in interstate commerce, the manner of supplying funds for both wholesale and retail sales of cars, by whom such funds are supplied, the rela- [fol. 115] tions between the manufacturer, the dealers, and the finance companies, the necessity of financing through financing companies, the sale at wholesale and retail of new and used automobiles, and the sources of supply for used automobiles sold in the industry.

That, in substance, is the first 27 paragraphs of the indictment.

Paragraphs 28 to 33, inclusive, describe the names of the corporate and individual defendants whose names I have just read to you.

Paragraph 34, which I shall read to you, because that is the charging paragraph is as follows:

> "And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that continuously for many years heretofore, to and including the day of the finding and presentation of this indictment, at and within the Northern District of Indiana, and in the aforesaid division thereof, said defendants and other persons and corporations to the Grand Jurors unknown, unlawfully have engaged in a conspiracy in restraint of the aforesaid trade and commerce among [fol. 116] the several States in Cadillac, LaSalle, Buick, Oldsmobile, Pontiac, and Chevrolet automobiles;"

There is the charging part. That is the charge in this case, that the Defendants have entered into a conspiracy to restrain unreasonably interstate commerce, that is, commerce between the several States or among the several States in these products of the General Motors Company; and the paragraph further alleges that they have conspired to do all of these things, do all of the acts and things and to use all means necessary and proper to make such restraint effective, including the means, methods and things hereinafter more particularly alleged.

Then follows some 30 paragraphs, running from Paragraph 36 or 37 to Paragraph 66, in which the Grand Jury has alleged that as a part of the conspiracy the Defendants have arranged and agreed amongst themselves to do the things set out in those paragraphs, and they may be summarized briefly as follows:

[fol. 117] That is, that the indictment charges they have conspired in pursuance of this conspiracy to restrict or restrain unduly and unreasonably interstate commerce in these cars; they have used these means, or done these acts to force General Motors dealers to use General Motors Acceptance Corporation for financing purposes and sales of automobiles, and not to use outside finance companies by requiring them to agree to do so as a condition to entering into contracts with them, making such contracts for one year only with the right to cancel without cause, in order to exercise it for that purpose, authorizing a cancellation of contracts, and cancelling contracts and further by refusing and failing to furnish and in holding up the trans-

portation, shipment, delivery of automobiles to dealers and further by examining dealers' records concerning financing and in coercing dealers, to permit such examination and to disclose such information, procuring same from employees of dealers without the dealers' knowledge and sometimes by bribery and requiring dealers to justify outside [fol. 118] financing, and further by using other means deemed necessary, appropriate and effective, and that they have discriminated in various ways between General Motors dealers using General Motors Acceptance Corporation for financing purchases and sales of automobiles and those using outside finance companies in regard to delivery and financing of automobiles that they have given General Motors Acceptance Corporation quarters for its financial business, information concerning the sale and delivery of automobiles to dealers, instruments necessary for its security in connection with financing and before delivery, while refusing all of said things to outside finance companies and imposing onerous requirements upon them as to the payment for automobiles.

To refuse.

To establish and fix a price or charge to be collected by General Motors Acceptance Corporation from purchasers of Cadillac, La Salle, Buick, Oldsmobile, Pontiac and Chevrolet automobiles, and of used automobiles handled by General Motors dealers, in all transactions financed by those corporations (said price or charge being [fol. 119] known as the GMAC differential); and to pay to the dealer a substantial part thereof, as a rebate, participation and payment for diverting the business of financing such purchases to General Motors Acceptance Corporation and away from other automobile finance companies.

To regularly and continuously conceal, and induce, assist and require dealers to conceal, from purchasers of said automobiles, the fact that such rebates, participations and payments have been and will be included in and paid out of the GMAC differential, which began about 1925 and has had the effect of compelling outside finance companies to adopt it, with the result that GMAC has paid to dealers more than one hundred millions of dollars since 1925.

Then, after the recital of those various acts and means we have a paragraph 68. That paragraph I charge you now, gentlemen, is surplusage in this indictment. You will

ignore it. It contains some references to the Ford Motor Company, to the Universal Credit Company, to the Commercial Investment Trust Corporation and the Chrysler [fol. 120] Corporation and the Commercial Credit Corporation.

That paragraph I am convinced is purely surplusage in this indictment and is of no relevancy and of no pertinance and therefore you will ignore it in considering the indictment.

[fol. 121] Paragraph 70 states that the dealers have complied with said intimations, suggestions, threats of cancellation, and statements of facts in order to save substantial investment in their business.

Paragraph 71 alleges that the effect of the conspiracy has been to burden, obstruct, and unduly restrain the said interstate trade and commerce in General Motors automobiles.

And perhaps I should read to you again Paragraph 72, which is again in the nature of a charging paragraph.

And so the Grand Jurors aforesaid, upon their oath aforesaid do say that the Defendants and other persons and corporations to the Grand Jurors unknown, throughout the three years next preceding the finding and presentation of this indictment, unlawfully have engaged in a conspiracy in restraint of trade and commerce among the several States in General Motors automobiles.

So the essential thing in this case, gentlemen, is that charge, and conspiracy, to restrain, hinder, restrict unduly and unreasonably the commerce from State to State in [fol. 122] General Motors automobiles in violation of this Sherman Act.

All else in this indictment is ends to that means, that is the charge in this case, and before we proceed to a consideration of application of the statute to the evidence in this case and the law applicable thereto, I think I should say something about what constitutes a conspiracy.

A conspiracy is a contract in writing, if you wish; oral, if you wish; without either writing or oral words, perhaps: a tacit understanding, perhaps. It is a joint understanding between parties, between two or more parties, each of whom know what it is, know what the understanding is, and each of whom assents to it.

It need not be in writing. It need not be by word of

mouth. There need be no evidence of a formal contract. But if two or more persons, by whatever means, have come to an understanding which they knowingly assented to and knowingly participated in which has for its purpose the violation of the law, that is a conspiracy.

[fol. 123] If that undertaking intends to accomplish an illegal end, if its existence leads to that inevitable conclusion, it is a conspiracy; but it is also a conspiracy if that undertaking, so understood, so assented to, intends to accomplish a legal purpose, by illegal means, either of such state of facts will constitute a controversy under our jurisprudence.

And so in this case, when you come to consider the question of conspiracy to restrain interstate commerce, unduly, unreasonably, it is your purpose to inquire from all of the evidence and to determine from all of the evidence whether there was any contract, any agreement, any undertaking, tacit or otherwise, whereby these parties entered into acts and did acts which inevitably led to an undue restriction of interstate commerce.

If they did that, they are guilty; if they did not, they are not. So that is the ultimate question that you have got to decide.

But, as I have said to you, you are the sole judges of the facts in that respect.

It may be that in my remarks to you, in my effort to [fol. 124] clarify the issues to you in this case, in my efforts to be of aid to you in the solution of the problem that confronts you, that you may infer from something that I have said that I may have some opinion upon this subject. It may seem to you that I imply certain opinions, but let me assure you, if I do, it is wholly unintentionally, and let me assure you further that if you should find evidence of such intention upon my part, it is in no wise controlling upon you because, after all, as I have said before, you are the sole judges of the facts and the sole triers of the facts.

Neither the judge of this court nor anybody else has any right to interfere with your conclusions upon those facts.

Now, having this issue before us, having presented the question, the sole question that is in this case, namely, that question of whether the Defendants by tacit under-

standing did otherwise, knowingly assented and entered into an arrangement whereby they brought about an undue restriction of interstate commerce in General Motors automobiles, I think I have read to you the statute; I think [fol. 125] I have defined for you sufficiently the nature of a conspiracy.

Let me say a little something to you about all of this evidence that has been submitted: First of all, the mere sizes of these corporations is no crime, nor, on the other hand, is it any defense. Size has nothing to do with it. It is solely a question of whether or not the acts charged in this indictment have been proved and whether they amount to an undue restriction of interstate commerce in automobiles; nor is it necessary for the Government to prove all of the acts alleged.

It is essential that they prove this conspiracy, and if you believe that the evidence is sufficient to sustain that conclusion, then you have a right to find that there is a conspiracy; but it is not essential to that conclusion that each and every one of these acts charged in the indictment be shown and, of course, we are not necessarily limited in our solution of this question by the amount of commerce involved.

I take it that under this statute undue restriction of any part of interstate commerce is a violation of the law. [fol. 126] If a group of Indiana farmers, or two Indiana farmers, should stop a truck coming from Illinois loaded with corn because they did not want any Illinois corn in Indiana, that is an unreasonable interference with interstate commerce although it is only one truckload of corn.

It is not the question of size, when you come to determine whether a thing is unreasonable or not. It may be one of the elements that you may consider. But whether a thing is unreasonable or not depends upon the character of the acts which you are considering.

It is not unreasonable for the General Motors Company to have a finance company. It is not unreasonable for the General Motors Company to have contracts with its dealers for a year or to have a cancellation clause in them. They have a perfect right to have a finance company and to recommend its use. They have a perfect right to cancel a contract from their dealer as long as they are not performing any unreasonable act.

[fol. 127] They have a right to determine whom they will sell their cars to, and they have a right to determine whom they will not sell their cars to because cars are their product and they are their property and no law compels them to sell them to any man they don't want to sell them to; but that is not the charge in this case. The charge is not that by having difficulty in contracts in itself, these defendants did anything wrong; it is not charged here that to recommend the use of GMAC there is anything wrong; it is not charged here that cancellation for cause is anything wrongful; but the Government's theory in this case is irrespective of these contracts and independent of them and outside of them the conditions have been asserted that they, under the designation of those to the grand jurors unknown, the actions have been such that the possibility, the ability to cancel, the ability to refuse to renew a contract, have been used as clubs upon the dealers to force them to use GMAC and that these acts that are complained of were acts that were used to force the dealers to use GMAC, the Government insists that these acts inspired by that motive have been such as to result in cancellations that otherwise would [fol. 128] not have occurred; in discriminations that would not otherwise have occurred in the shipment of cars in interstate commerce and in refusals to renew that would not otherwise have occurred, and in the use of GMAC when it otherwise would not have been used.

In other words, the Government has no right to complain, and it may not complain of the defendants' right to limit its sales of cars to persons whom it may select, its right to determine who it shall sell to, its rights to determine upon what terms it will sell, its right to pick its own dealers.

It can only complain if the defendants do sufficient of these acts charged in the indictment as constitute duress upon the dealer to accomplish a result that would have otherwise not have been accomplished, and to make a dealer do something that he would not have done of his own free will.

That, almost, is the question in this case—whether the dealer could act as a free man; whether he could act of his own free will.

The defendants say:

[fol. 129] "We never imposed any restrictions upon that freedom of action."

The Government says it did and there is that question. If it did—if the defendants did that sort of thing—and if it resulted in an unreasonable restriction and unreasonable restraint of interstate commerce, then you would have a right to find them guilty.

If they did not do it, this lawsuit is at an end, and that is a question which you have got to decide.

You know, you have heard of the terms:

Exposition;
Persuasion;
Argument;
Coercion.

They are different steps. They are graduated steps that I suppose every salesman goes through, except perhaps the last.

In Exposition one may expound the merits of that which he has to sell; he may explain its nature and by his exposition make a clear picture of what he has.

By persuasion he may endeavor to persuade the person to whom he is talking to accept that which [fol. 130] he has to offer.

There is little advancement in his further progress, to argue.

Persuasion means something softer than argument, perhaps, but he may argue with him, and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer.

All of these are proper.

He may not go beyond that and use something that is within his power to use as a club to coerce the person to accept that which he has to offer.

Now, you have listened here to the evidence of the Government and of the defense.

The Government has produced witnesses whose testimony you will remember probably with greater clarity than myself.

There has been represented to you in the argument of counsel and those witnesses have testified as to things that have occurred in support of the indictment, in various parts of the United States, in California, in Georgia on

the south, and Duluth, Minnesota on the north, and [fol. 131] somewhere in Ohio on the east; they have testified as to conversations with the defendants and various of their representatives and you have heard their testimony.

[fol. 132] Against that the Defendants have offered their testimony that they never have used duress, that they never have insisted, have never used this right of cancellation, this one-year contract, the right to renew it or not to renew it or used the other things as clubs.

The easiest way I know to express it to you is that they never have used it to force dealers to use GMAC.

I shall not discuss the evidence on either side. That is your province. If the Government has proved the acts beyond all reasonable doubt that are averred in this indictment, you have a right to find these Defendants guilty.

If it has not proved them so, you should acquit them, and I don't know that I can make the issue any clearer to you than I have done.

You must remember that, after all, this coercion, if you find that coersion exists, then the ultimate question is; Has that resulted in unreasonable restraint of interstate commerce? And that is a question for you to determine from all of the evidence. Those are the issues.

Now, I have said to you that you are the judges of the [fol. 133] facts. As judges of the facts, you are the judges of the credibility of the witnesses. You determine how much credit you shall give to any witness who has testified here. You cannot refuse to credit any witness arbitrarily without cause, but the question of credibility, how much credit, how much credence you shall place in any witness lies wholly within your own judgment, that is, reasonably exercised and not arbitrarily exercised.

You have a right to, and you should, take into consideration the interest or lack of interest of the witness who testifies; his manner upon the witness stand; the reasonableness or the unreasonableness of his testimony; the fact, if it be a fact, that he has been disputed by other credible testimony; the fact, if it be a fact, that he has been corroborated by other credible testimony; and all other facts and circumstances surrounding his

testimony; and, from all of those, determine what credit you shall extend him.

The indictment is no evidence against the Defendants. It is no presumption against the Defendants, it raises no presumption. Under our system of jurisprudence, a man [fol. 134] charged with violation of the law is presumed to be innocent and that presumption controls until and unless it is overcome by proof of guilt by the evidence beyond all reasonable doubt.

A reasonable doubt is not a conjectural or an illusionary doubt that you may conjure up in your minds in order to acquit a defendant, but it is a substantial doubt based upon an arising out of all of the evidence. A reasonable doubt is such a doubt as would cause you to hesitate in your ordinary business transactions. We frequently say,—and I think it is as good a statement as any,—proof beyond a reasonable doubt is proof to a moral certainty.

If you are morally certain that a man is guilty, you should find him guilty. If you are not morally certain, you should acquit him. But all of these things must be based upon and arise out of the evidence.

When I spoke of the credibility of the witnesses, I did not mention the Defendants particularly. The Defendants are to be tested and they are to be tested in their credibility by the same rule that applies to other witnesses. [fol. 135] You have a right to consider the fact that they are interested in the case, but you cannot refuse to credit them simply because they are defendants. You must test them by the same rule that you test the credibility of other witnesses.

You have a right, in considering this cause, to find all of the Defendants guilty, to find them all not guilty. You have a right to find part of them guilty and part of them not guilty.

You are not concerned with punishment. The jury should not permit that to enter into their consideration because, fortunately or unfortunately for me, the law puts that duty of determining the punishment upon the Judge of the Court.

I might say something about the statute of limitations, which has been mentioned in the argument. The Government is permitted to go back indefinitely to show a conspiracy, that there can be no conviction for a con-

spiracy unless it is shown to have had existence within three years prior to the return of the indictment or unless acts were performed in furtherance of it within that [fol. 136] period.

It appears in this case that the corporate organization of these Defendants have changed, some of them have changed in the period of years in which the evidence has run. Some of them came into existence in 1936, the General Motors did it not? There were formerly separate corporations, the Chevrolet Corporation and certain other corporations. They are now a part of the General Motors Corporation.

But a conspiracy may vary in its members from day to day. Five of you may be in a conspiracy to rob a bank on Monday; one of you may drop out on Tuesday, and a new man may take his place on Wednesday. Of course, the man who drops out is liable for nothing that occurs afterwards. But every person who joins a conspiracy, after its formation, understands it and becomes a part and parcel of it and knowingly assents to it, becomes liable as a conspirator from the date of such knowing, conscious participation.

Counsel made arguments to you today. They have a right to do that and they are supposed to do that. They are advocates, and every man under our system of juris- [fol. 137] prudence is entitled to an advocate; but what they say to you is not evidence. You are to consider solely the evidence in the case.

Something has been said about direct and indirect evidence. Direct evidence is direct testimony or direct documentary evidence. Indirect evidence is proof of circumstances and in controverted cases, as in other cases, it is proper if the evidence justifies it to find that a controversy exists purely from circumstantial evidence; but, in determining the weight of all evidence, circumstantial or direct—after all—you must bear in mind that your evidence must prove to you beyond all reasonable doubt the guilt of the acts charged in the indictment.

I was asked to charge you that the failure of the defendant to testify is no evidence and raises no presumption against him. That is the law. There is no question about it and you shall keep that in mind.

I have been asked to advise you that if a witness testifies falsely in any one material respect, you may disregard

all of his testimony except and unless he is corroborated [fol. 138] by other credible evidence. I may have said that to you before.

Now, I think I have given you about all the help that I can in your problems.

Are there any suggestions or exceptions, gentlemen, from counsel?

[fol. 139] Mr. Smith: If your Honor please, I would like to except to the charge that says the defendants can be convicted under Section 14 of the Act.

I think that the Government agreed to limit it to Section 1.

The Court: I did not say they could be convicted under that, but I read that from your brief.

Mr. Smith: I am afraid not, if your Honor please. 14 is out. The argument was made, if your Honor please, that the inclusion of 14 would make the indictment duplicitous and the Government said they were not conducting this prosecution——

The Court: That was not before me.

Mr. Baldridge: If the Court please, you are reading from Section 14 of the Sherman Act and from the Clayton Act.

The Court: I read this:

> "Section 14. Whenever a corporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation * * *"

Mr. Ballard: That is the Clayton Act, your Honor.

[140] The Court: Well, it is still a part of the anti-trust Act.

Mr. Smith: It makes it duplicitous.

The Court: Why?

Mr. Smith: There are two sections, one under Section 1, and one under Section 14.

Mr. Ballard: No crime is charged under section 14 of the Clayton Act.

The Court: Well, the defendants' brief says this:

> "The applicable portions of the Sherman law and the Clayton Act are as follows—"

Mr. Smith: I can explain that.

The Government countered by saying we were wrong because they did not make any claim under Section 14; so your Honor has read it right, but you will see by referring to their briefs that they disclaim that section 14 because mention of 14 would render the indictment duplicitous.

The Court: I don't think it would, but if you have taken that position——

Mr. Baldridge: That has been the Government's position, your Honor.

The Court: The Jury may ignore what I said about Section 14. It will be ignored.

[fol. 141] Mr. Smith: I would like to except, if your Honor please, to so much of your charge as says that the size is not to be considered in any part of interstate commerce.

The Court: I did not say it was to be considered. If I said that to the Jury, it is a mistake, Mr. Smith. What I meant was this:

Size of a corporation, or size of an undertaking is no crime; nor is it of itself a defense; it is a proper element to be considered, in considering all of the evidence.

Mr. Smith: I meant, if your Honor please, the size of the restraint—not the size of the corporation. Your Honor gave an illustration.

The Court: You mean the amount?

Mr. Smith: Your Honor gave the illustration of the Illinois corn.

The Court: You may have an exception to that. I think I am right about it and I so instruct the Jury.

Is there anything else?

Mr. Smith: Yes, if your Honor please.

I request you to charge that in order to have any jurisdiction in this Court it is necessary for the Government [fol. 142] to show the commission of an overt act within the three-year period of the statute.

The Court: I believe I did charge that.

Mr. Smith: Since 1935.

The Court: If I did not charge that, I charge you now, gentlemen, that no matter when, if you find there was a conspiracy, in order to convict in this case you must find that it existed, continued within the three-year period prior to the return of this indictment and that some overt act

was performed within this district, within that time, in the Northern District of Indiana which includes South Bend and various other cities in the Northern part of Indiana.

I guess that covers that.

Is there anything else, gentlemen?

Mr. Smith: The other thing, if your Honor please, is an exception to your Honor's refusal to charge as requested.

The Court: Well, I will say as to the request to charge:

I received from the Government Friday some request to charge.

I received from the Defendants some requests to charge. [fol. 143] I received an amended copy of the defendants' request to charge this morning, 91 pages in length; and the Government's request is quite lengthy, and I felt that I could charge this Jury better and simplify for them the issue more efficiently by speaking to them orally as I have done.

I have not intended to refuse any proper instruction that was tendered. I have hoped to cover all the subject matter that I thought was pertinent in this trial. If there is any one thing that you think of that I have not covered, I will be glad to consider it.

Gentlemen, you have the forms of verdict submitted. You will retire with the officer and return your verdict.

There are three forms of verdict, as follows:

> [fol. 144] "We, the Jury, find each and all the defendants guilty in manner and form as charged in the indictment"; and
>
> "We, the Jury, find each and all of the defendants not guilty"; and
>
> "We, the Jury, find the defendants (naming them) guilty in manner and form as charged in the indictment"; and
>
> "We, the Jury, find the defendants (naming them) not guilty."

You will retire.

Mr. Ballard: Will your Honor give instructions to the alternates on the jury?

The Court: Yes, I will do that.

You will retire with the officer and consider your verdict, and the two alternates who have sat with us will now be excused and you may retire to the Marshal's office or to the

Clerk's office and receive your compensation, and you may be excused from serving on the jury of this court for the period of three years and the Clerk will enter that notation upon the record.

So you may pass out first, gentlemen, if you will, you two alternates.

[fol. 145] Now, Mr. Marshal, you have the same officers in charge of this jury that you had all of the time?

The Marshal: Yes, sir, your Honor.

The Court: Is there any necessity for their being resworn?

I think they were sworn sufficiently.

Mr. Smith: Not so far as we are concerned.

The Court: The Court will stand adjourned until tomorrow morning at 10 o'clock.

The Clerk: Court will now stand adjourned until 10 o'clock tomorrow morning.

The Court: Just a minute before we adjourn; just a minute.

I said nothing about the exhibits. The Jury will be entitled to their use.

Are they bulky or large?

Mr. Baldridge: There are three boxes of them, your Honor. We should like the Jury to have the benefit of the exhibits.

The Court: The Jury has a right to the exhibits on both sides.

Mr. Baldridge: They are here in the court room.

The Court: If you will communicate with the Clerk and [fol. 146] the Marshal, they will see that they have them. They don't have to get them immediately as they will have their dinner first.

The Court will stand adjourned until tomorrow morning at 10 o'clock.

(Whereupon, an adjournment was taken until 10 o'clock a.m. the following day, November 16, 1939.)

[fol. 147] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Criminal No. 1039

THE UNITED STATES OF AMERICA

vs.

GENERAL MOTORS CORPORATION, GENERAL MOTORS SALES CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION OF INDIANA, INCORPORATED, E. W. BERGER, GEORGE F. BENKHART, M. E. COYLE, JAMES D. DEANE, NELSON C. DEZENDORF, AUGUST FREISE, RICHARD H. GRANT, ROY HILL, W. E. HOLLER, W. F. HUFSTADER, H. J. KLINGLER, WILLIAM S. KNUDSEN, RUSSELL LESHER, RALPH W. MOORE, W. J. MOUGEY, ARTHUR B. PURVIS, JOHN J. SCHUMANN, JR., ALFRED P. SLOAN, JR. and G. I. SMITH

RECORD OF PROCEEDINGS

BEFORE HON. WALTER C. LINDLEY, DISTRICT JUDGE

SOUTH BEND, INDIANA

November 16, 1939, Morning Session.
Page 6005 to 6023.
RAN. 8897, McCorkle, Reporter, Chicago, 7th Copy.

[fol. 148] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Criminal No. 1039

THE UNITED STATES OF AMERICA

vs.

GENERAL MOTORS CORPORATION, GENERAL MOTORS SALES CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION OF INDIANA, INCORPORATED, Et Al.

Proceedings resumed before the Honorable Walter J.

Lindley and jury at 10:00 o'clock, a. m., on November 16, 1939.

Present:

COUNSEL HERETOFORE NOTED.

[fol. 149] The Court: Gentlemen of the jury, the Marshal advises me that there is some question you would like to ask the Court with reference to the charge and the indictment. He has handed me a note in which the foreman asked me to explain more fully Sections 34, 35, 36, 37, 38, and 72 of the indictment, and asked me to explain the statute which is involved in this case, providing that every contract, combination or conspiracy in restraint of trade, that is, in restraint of trade and commerce among the states, is illegal.

I shall attempt to give you further explanation, but perhaps you have some questions in your minds by which you may specify more fully your difficulties. If you have and will indicate to me in what respect, I shall attempt to make clear the legal questions, so far as I can.

Are there any additional questions that any of you have in mind that you would like to submit to the Court at this time?

The Foreman: Your Honor, the jury would like to know if the defendants are found not guilty, can the government appeal the case?

[fol. 150] The Court: No. They cannot.

The Foreman: If the defendants are found guilty, can they appeal the case?

The Court: Yes.

The Foreman: If in finding through this evidence that GMAC has been forced upon dealers, what should the verdict of the Jury be in that case?

The Court: Any other questions, gentlemen?

The Foreman: That is all I have. Some of the other individuals may have something.

The Court: I think I said to you yesterday that there might be three verdicts in this case and I think I gave you three forms of verdict. In one it is provided you may find the defendants all guilty and in another it is provided you may find them all not guilty; in the third it is provided you may find some of them guilty and some not guilty, and there are spaces left in the form of

the verdict in which you may place the names of those you find guilty and other spaces in which you may place the names of those you find not guilty. You may find one of the defendants guilty, and the others not guilty. You may find all but one guilty and all others not guilty. [fol. 151] In other words, the decision as to who, if anybody, and how many, who they are, that shall be found guilty, if any, lies wholly with you.

Now, I might say this to you, gentlemen, in general: I do not know anything of your difficulties, but it is desirable in every jury trial, especially this kind of a case, that the jury agree, if it can conscientiously do so.

You gentlemen are aware of the time, study, care, attention, and funds involved in a trial of this size, and a disagreement, of course, would result, of a necessity, in a retrial and a similar expenditure of effort, time and money.

Consequently, I say to you with all seriousness that you should attempt to reconcile any differences, if you have any, and that you should agree in this case, if you can say to yourselves conscientiously that you can agree. You should not use any coercion in your verdict, but you should, if possible, as reasonable men, agree and come to a unanimous decision, in order to prevent a repetition of this trial, if on all the evidence and on your conscience you can say that you can do so.

[fol. 152] Now, these paragraphs in the indictment which you mention, I think I said to you in my charge yesterday that Paragraph 34 was the charging paragraph of the indictment. That is one of the paragraphs that you asked me to discuss somewhat more at length.

You have a copy of the indictment with you, of course, you have the original indictment, and you have probably read over and over again that charging paragraph, in view of the question concerning you I conclude that you have done so. We will read it again:

> "And the Grand Jurors charge that continuously for many years, up to and including the day of the finding and presentation of the indictment, at and within the Northern District of Indiana, and in the Division aforesaid, thereof, which is the Division where we are located, which is the South Bend Division.

"* * * unlawfully have engaged in a conspiracy in restraint of the aforesaid trade and commerce * * *"

Of course, that aforesaid trade and commerce refers back to the commerce in General Motors cars shipped from one state to another.

Of course, that aforesaid trade and commerce refers back to the commerce in General Motors cars shipped from one state to another.

"* * * of the aforesaid trade and commerce among the several states in * * *" (naming them) the different makes of General Motors automobiles.

[fol. 153] "* * * and the defendants have conspired to do all acts and things and to use all means necessary and appropriate to make said restraint effective, including the means, acts, and things hereinafter more particularly alleged."

Then follows a recitation of the averments that the government relies upon which, it is said constitute the means by which the alleged conspiracy came into existence, out of which it grew and by which it was effectuated.

Now, I do not know just what you have in your minds about that section. I could not repeat to you word for word what I said yesterday, because I spoke orally, spoke extemporaneously, and with only a few notes before me; but if there is any specific question about it, gentlemen, that might enlighten me further as to your trouble in that respect, I shall attempt to clarify the issue for you. Pardon me, Mr. Foreman, did you have something further?

Mr. Foreman, do you have something further?

Foreman Geyer: It seems, Judge, your Honor, that a [fol. 154] great many difficulties arose from the fact that in Section 72, in regard to whether, if the defendants are found guilty of conspiracy and would they automatically be found guilty of this conspiracy in restraint of trade or commerce? If the evidence shows that they have coerced and conspired; would that mean that this conspiracy consisted of restraint of trade and commerce?

The Court: Paragraph 72 is largely a repetition of Paragraph 34. I take it that it is largely a summation, a summary, a concluding summary of the charge. I do not know that it was essential to the indictment at all, because the indictment is probably complete without it. But Section 72

proceeds to aver that the defendants and other persons and corporations, to the Grand Jurors unknown, throughout the three years next proceeding the finding and presentation of this indictment, at the places, and in the manner in the form aforesaid, unlawfully engaged in a conspiracy in restraint of trade and commerce among the several states in General Motors automobiles."

Section 72 you may ignore, if you desire, and consider only Section 34, because Section 72 is really a repetition, I take it, of Section 34.

[fol. 155] It is the purpose of each of those paragraphs to have a recitation before and after a recitation of the means by which it is alleged that the alleged conspiracy came into existence or was effectuated.

As I said to you yesterday, the ultimate question for you to decide is this: Did the defendants conspire to restrain unreasonably or restrict unreasonably interstate commerce in General Motors cars? That is the ultimate question, but involved in that are the questions of fact as to whether the means that are set up in the indictment, the acts constituting the means by which the alleged conspiracy was effectuated, have been proved.

The Government's case under this indictment is grounded upon this set-up, if I may use that word: That these defendant corporations and these individual defendants who are officers, agents and representatives of the corporations, have, by concerted action, knowingly participated in and done such things as create coercion upon the dealers to bring about a certain result, the use of GMAC.

It is the theory of the Government, and a theory which has been sustained by the Court on demurrer, as [fol. 156] constituting a valid charge under the anti-trust law, that the defendants proceeded beyond acts proper in themselves and arrived at a place where their acts were not proper, acts which prevented free action by their dealers in the selection of a financing company.

I think I said to you yesterday that the defendants may expound the alleged advantages of GMAC; they may explain fully the characteristics of its operations, as they claim they exist; they may point out the advantages; they may expound all of those things; they may persuade; they may use persuasion in their conversations, in their communications with their dealers; they may even argue. Those things are all proper. They have a right, as I have said, to

determine to whom they shall sell their automobiles and to whom they shall not. Those things constitute no violation of the law.

But the charge in this indictment is that they utilized a contract which was limited to one year and might or might not be renewed and a cancellation clause in that contract upon short notice and discrimination in the shipment or non-shipment of automobiles, used them as a club upon their dealers, and thereby coerced them to use something which they, as free agents, would not have used.

[fol. 157] That is the groundwork upon which this charge is brought, and whether they did that or not is a question of fact which you alone can decide, and Government says, and the charge in this indictment is, that this coercion, this misuse, that has proceeded, according to the indictment, beyond exposition, persuasion and argument, has resulted in a situation where the commerce in General Motors cars, the products of General Motors, from state to state, has been unreasonably and unduly restricted and restrained.

I suspect that is very largely a repetition of what I said to you yesterday.

[fol. 158] I do not know whether it makes any clearer the issue in this case, whether it helps you in the solution of your problems or not. If it does, I shall be happy about it.

Paragraphs 35, 36, 37, and 38 that you asked about are the paragraphs in which the Government sets up the specific things which it contends constituted the means by which the alleged conspiracy was effectuated.

Are there any other questions, gentlemen?

The ultimate question, after all, is whether, under all the facts and circumstances, the acts of coercion mentioned in the indictment and set up in the indictment have been proved beyond all reasonable doubt.

Second, if they have been so proven, whether they have resulted to effectuate an unreasonable restraint of interstate commerce in automobiles. If it effectuated a restraint, then you have got to determine from all the facts and circumstances whether it is an unreasonable restraint.

Is there anything else, Mr. Foreman, or any other member of the Jury:

The Foreman: No.

[fol. 159] The Court: Very well. You may retire.

Mr. Ballard: If your Honor please, may we have just a moment?

The Court: Yes.

Mr. Ballard: The Defendants except to your Honor's charge that the Court held on demurrer that the Defendants have gone beyond the limits of proper action.

The Court: Well, if the Court said that, the Court was in error. What the Court meant to say was that this Court has held that the acts, the charging in the indictment, constitute a valid charge at law.

The Court has not passed upon the facts involved in this case at all. If I said something that misled the Jury in that respect, they shall bear that in mind.

Mr. Ballard: The Defendants request the Court to charge the Jury that it should not be influenced by the question of the respective rights of the parties to an appeal.

The Court: That is true, gentlemen. After all, a fair and impartial consideration of this question should not be imperiled or endangered by any consideration of what the [fol. 160] result of your verdict may be.

You are not concerned with results. You are not concerned with punishment if you should find a verdict of guilty because that is up to me. And you are not concerned with the respective rights of the parties and you shall have no part in that decision in this case.

Is there anything else, gentlemen?

Mr. Ballard: The Defendants request the Court to charge the Jury that if the Jury finds that the Defendants conspired to force GMAC on dealers but also finds that this did not restrain trade and commerce among the States in General Motors automobiles, the Jury should find the defendants not guilty.

The Court: Well, that is substantially the law. I do not like these charges that end with a conclusion you should or should not find the defendants not guilty.

But, as I have said to you heretofore, the charge is that Defendants conspired to restrain unreasonably interstate commerce in General Motors cars. That involves the preliminary question of fact as to whether coercion, as set up in the indictment or as averred in the indictment, has [fol. 161] been proved: and, if it has, it enters into your ultimate verdict. If such acts, those acts, constitute a

restraint, undue restraint of interstate commerce in General Motors automobiles, both of those things are essential before you can find the Defendants guilty.

I think that covers it. Are there any other questions?

Mr. Smith: Just for the sake of the record, if your Honor pleases, may it appear that we take an exception, which we intended to take and I think took, to your Honor's refusal to charge as requested, and will it be necessary to have those requests incorporated in the record for identification?

The Court: Yes, if you wish to insist upon that. I said yesterday when you made that request, Mr. Smith, that it was not practical to consider the respective charges that had been offered.

My feeling about the duty of a Trial Judge in the decision of a jury question, my conception of the Judge's aid to the jury, is that it can be done and such aid can be rendered more efficiently by an oral charge which de-
[fol. 162] scribes, in as simple terms as possible, the legal questions involved and that I refrain, except as a last resort always, from giving to the Jury formal charges which become so involved in legal language and legal terms as to be of little aid to the Jury.

Hence my custom and my practice, from my absolute conviction that the efficiency of a Trial Judge lies largely, so far as the charge is concerned, in the method that I follow, and for that reason I followed it in this case, and I have endeavored to include in that charge everything that seemed to me proper to be considered by the Jury.

I said yesterday, and I repeat, that if there is any specific thing in the charge that has been handed to me, some 90 odd pages in length, that I have not covered, and which you deem essential, I think, in fairness to the Court, you should point it out.

Mr. Smith: On the other hand, if your Honor please, in fairness to the Defendants, is it not better that we should simply submit our requests and let your Honor do as you see fit with them, as you have done, because cer-
[fol. 163] tainly we would not like to get into an argument with the Court in regard to 90 or more specific propositions of law that we think are relevant, and some of them indeed controlling, in this case, leaving it to the future.

The Court: It is my conception that it is the duty of counsel to call to my attention now anything that is deemed essential to the adequate protection of your clients, so that if I have overlooked anything I may now correct that.

I do not think you can expect a Court to go through a long series of charges such as has been tendered here and with any degree of intelligence so modify it as to make it properly applicable or pass upon it in the way of refusals or acceptances.

It seems to me wholly impracticable in a trial, and it seems to me that the only thing that the law requires from both sides in a lawsuit is a fair request to the Court as to any theory deemed essential so that the Court may advise the Jury if there has been any oversight.

I have been out of patience all of my life with the custom of written instructions to juries. I think they [fol. 164] are an abortion and have no place in a trial and I think that the modern rules which tend toward that direction instead of away from it are a gross interpretation of what a Court should do.

Now, this tendered charge may be incorporated in the record and you may have your exception, but it does not change my view that the proper method in this and every other case should be along the line that I have suggested.

Mr. Ballard: If the Court please, the Defendants request the Court to charge the Jury——

The Court: What I have said in that respect shall not affect them.

Mr. Ballard: I beg your pardon?

The Court: What I have said in that respect should not affect them.

Mr. Ballard: No.

The Court: That is true anyhow, gentlemen.

Mr. Ballard: I was not going to presume to that extent. I was going to make some oral requests.

The Defendants request the Court to charge the jury that if they find that the defendant corporations together constitute a single cooperative enterprise, in the course of which defendant corporations do not compete with one [fol. 165] another, that there is and can be no unlawful agreement among them to restrain trade and commerce among the States, in automobiles.

Mr. Baldridge: If the Court please, that is a question of law.

The Court: Well, I shall not give that instruction. It does not seem to me applicable to this case. You may have an exception.

Mr. Ballard: If the Court please, the Defendants request the Court to charge the Jury that if they find that General Motors dealers have been restrained as a result of an agreement entered into among the Defendants, effectuated by the acts alleged in the indictment, they should find the Defendants not guilty, unless they also find that the interstate trade and commerce in General Motors automobiles which moves through the retail outlet which those dealers constitute has been unduly restrained as a result thereof.

The Court: Will you read that, please, Mr. Reporter?

(The record was read by the reporter.)

Mr. Smith: Has been restrained?

Mr. Ballard: Has been restrained.

Mr. Smith: Unduly.

[fols. 166-167] Mr. Ballard: Has been unduly restrained as a result thereof.

The Court: Well, I think I covered that in my charge to the Jury. I think I have said that previously.

Anything else, gentlemen?

Mr. Ballard: That is all, your Honor.

Mr. Smith: No, your Honor.

The Court: You may retire with the officers again.

(Thereupon, the jury retired to the jury room in custody of two Deputy Marshals.

Whereupon, further proceedings were had before the Court, out of the presence and hearing of the jury, viz:

The Court: I should like both reporters to submit me a transcript of what I said last night and what I said this morning. There can, of course, be no change in the substance of what I have said, but there may be some corrections in grammar and construction of sentences.

If there is nothing further, gentlemen, the Court will be in recess.

(Whereupon, the Court recessed pending verdict of the Jury.)

[fol. 168] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT OF MOTION TO SUSPEND AND MODIFY PROVISIONS OF CONSENT DECREE—Filed June 5, 1946

Respondent, Ford Motor Company, a Delaware corporation, by its attorneys, Clifford B. Longley and Wallace R. Middleton, hereby amends its motion to suspend and modify provisions of consent decree by submitting in support of such motion the attached affidavits.

Clifford B. Longley (sgd) Clifford B. Longley.
Wallace R. Middleton (sgd) Wallace R. Middleton, 1400 Buhl Building, Detroit, Michigan, Attorneys for Respondent, Ford Motor Company.

[fol. 169] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF MICHIGAN,
County of Wayne, ss.

J. R. Davis, being duly sworn, deposes and says that he is Vice President of Ford Motor Company, one of the respondents in the above entitled cause; that he has read the motion of the Ford Motor Company heretofore filed in this cause for relief from the provisions of the consent decree entered herein and the amendment thereto to which this affidavit is attached and that the statements of fact therein contained are true to the best of his information and belief.

Deponent further says that he and the other officers and directors of Ford Motor Company are concerned over the statistical data shown in the chart attached to the affidavit of C. K. Warren which is made a part of said motion revealing that the percentage of cars sold by Ford Motor Company with respect to all cars sold by all automobile manufacturers has been decreasing; that it is considered by them necessary to take every reasonable step to try to reverse this trend; and that they desire to take certain

steps for this purpose which they are now prohibited from taking by the provisions of said consent decree.

[fol. 170] Deponent further says that in order to increase the sale of its cars it is necessary among other things (1) to increase and strengthen its dealer outlets; (2) to reduce the delivered price to its retail customers and (3) to grant more favorable and lenient financing terms to meet competition; that as a result of the Ford Motor Company not being able to own and control a finance company and not being able to induce its dealers to patronize such finance company or some other finance company whose rates and practices would be as helpful in the sale of Ford products as Ford's own finance company, the Ford Motor Company is in the position of having to refrain from comment on dealer relationships with finance companies which are inimical to the interests of the Ford Motor Company and to refrain from taking any action which would tend to require finance companies doing business with its dealers to adopt rates and practices which are conducive to the sale of Ford products: that General Motors Corporation since it is free of these restraints and since it owns and controls a finance company is able to benefit itself and has benefited itself materially by doing the things which Ford has wanted to do but is prevented from doing.

Deponent further says that the Company has been and will be handicapped in increasing and strengthening its dealer outlets because the dealers most able to sell cars in quantity are those who are young and energetic but do not necessarily have the capital required to finance an active dealership, because it happens in many cases that the men with capital are older men without a future to establish who are more conservative and less willing to take risks and that they, whether in a dealership by themselves or in partnership with the younger men, exercise a restraining influence on the dealership and because the young and energetic dealers, whether they obtain their financing from private individuals or from finance companies or banks, are controlled from the point of view of the safety of the investment rather than from a primary desire to sell cars and trucks in volume even though there may be more or less financial risk involved; that your deponent is informed and believes that General Motors Holding Corporation has invested large amounts of cap-

ital in dealerships throughout the country and that your [fol. 171] deponent is informed and believes that General Motors Holding Corporation has invested in these cases far more money in ratio to the amount put up by the dealer than is the general practice of finance companies or banks; that while the decree does not prohibit Ford Motor Company from making capital loans to its dealers where no part of the proceeds of the loan are used to finance the wholesale purchase of cars, it does prohibit the Ford Motor Company from acquiring an affiliate for the purpose of financing the wholesale purchase of cars by dealers and from owning, acquiring, controlling, or closely affiliating with a finance company for the purpose of providing more favorable and lenient financing plans to meet competition, and for the purpose of operating in conjunction with a corporation that might be set up by the Ford Motor Company to provide working capital for *new dealers, present dealers, or long-established* dealers who may be in need of additional finances to more effectively merchandise additional cars, trucks, and parts; that capital loans by a holding corporation set up for that purpose by the Ford Motor Company would be futile in an effort to merchandise a greater number of cars and trucks unless during the so-called peak selling season the dealer would be able to obtain very liberal wholesale financing terms on his used car stock; that during normal periods of merchandising automobiles and trucks the percentage of new cars or trucks sold without a used car or truck being accepted in trade is relatively small, about 20 percent of the dealer's total sales; that Ford Motor Company and its dealers are further handicapped in not owning, acquiring, controlling or closely affiliating with a finance company because there are many occasions when large fleet sales of cars or trucks could be made provided special financing arrangements were available and such special or liberal financing terms could be made available if the Ford Motor Company owned or controlled a financing company; that because of these situations a so-called motor holding corporation and a financing company are inextricably tied together and that one cannot effectively [fol. 171A] from a merchandising standpoint be undertaken without some control over the other; that General Motors Corporation through its control of both General Motors Holding Corporation and General Motors Accept-

ance Corporation is in a position to fit these two programs together into an integrated whole and that this has enabled General Motors to maintain a large aggressive, adequately capitalized and financed dealer organization; that this deponent has been informed of many instances in which General Motors Holding Corporation through this arrangement has been able to finance dealerships which as a result have been able to enjoy much greater sales activity than the Ford Motor Company has been able to obtain from its dealers in such area.

(sgd) J. R. Davis

Subscribed and sworn to before me this 31st day of May, A.D., 1946 (sgd) Ethel A. Nelson, Notary Public, Wayne County, Michigan, My commission expires: June 3, 1947.

[fol. 172] In United States District Court

(Title omitted.)

Affidavit In Support of Motion

District of Columbia, ss.

H. M. Cunningham, being duly sworn, deposes and says that he is the Manager of the Washington branch of the Ford Motor Company and has been the Manager of that branch during all the time referred to below; that during the years, 1940 and 1941, his branch was able to obtain only a very small percentage of the taxi cab business in Washington; that during the year, 1940, the Ford dealers in Washington sold only 42 taxi cabs while, according to registration certificates, Chevrolet dealers sold 617 taxi cabs; that he has been advised by the representative of the Steuart Motor Company, a Ford dealer in Washington, that this difference in taxi cab sales was due to a selling arrangement between General Motors dealers and taxi cab operators and taxi cab companies which the Ford dealer could not meet; that, according to this advice, Premier Cab Association in 1939 purchased from Lustine-Nicholson Motor Company, a Chevrolet dealer, approximately 100 taxi cabs which were financed through General Motors Acceptance Corporation with no down payment upon dealer's endorsement only; that the titles in these

instances were in the names of the individual cab drivers; [fol. 173] that according to this advice, in 1940 another deal was worked out with the same Chevrolet dealer involving approximately 200 taxi cabs, financed through General Motors Acceptance Corporation, pursuant to which the units were turned over to the cab drivers with no down payment but with the taxi cab association guaranteeing payment of the notes and retaining title to the cars until the same were paid for; that this deponent was informed that in 1941 the Senator Cab Company purchased a number of cabs from Ourisman Motor Company, a Chevrolet dealer, with General Motors Acceptance Corporation financing which involved no down payment; that the titles issued to cover these units showed that a lien of $1,074.00 was involved which amount represented the cost of the car; and that deponent is informed that a $75.00 refund was made to the drivers after six months provided all notes had been paid up to that time; that Ford dealers were unable to obtain similar financing arrangements from any finance company and were therefore unable to compete in the sale of these cabs.

Deponent further says that in the sale of Ford transit buses there has been reported to him similar difficulty in meeting finance terms of competitors which have run for a period of from four to seven years; that Ourisman Motor Company through an arrangement with General Motors Acceptance Corporation is reported to have sold in 1941 forty-seven hundred units in Washington, D. C. which arrangement is understood to have been without recourse and involving down payments which averaged only $150.00 including the cost of license tags, title, etc. and ran for periods of 24, 30 and 36 months. Deponent further says that neither he nor anyone in his organization has been able to do anything about transactions of this sort since he has been advised that he cannot make arrangements with finance companies for the purpose of visiting dealers to enable the dealer to compete with transactions of this sort; and that he is advised that the Ford dealers in his territory were by themselves unable to obtain financing arrangements from existing companies which would enable them to compete in such transactions.

[fol. 174] Further dependent saith not.

(sgd) H. M. Cunningham

FINANCE COST COMPARISON CHART - DETROIT TERRITORY
TRUCK CHART
LESS THAN 50% DOWN PAYMENT
LONG DISTANCE HAULING

	Cmac		Universal Credit		Associates Disc.		Commercial Credit	
	12 Mo.	15 Mo.	12 Mo.	15 Mo.	12 Mo.	15 Mo.	12 Mo.	15 Mo.
Retail Selling Price	1,450.00	1,450.00	1,450.00	1,450.00	1,450.00	1,450.00	1,450.00	1,450.00
Insurance	164.85	243.18	234.50	348.31	242.53	359.36	240.69	361.04
Basic Time Price	1,614.85	1,693.18	1,684.50	1,798.31	1,692.53	1,809.36	1,690.69	1,811.04
Down Payment	614.85	693.18	684.50	798.31	692.53	809.36	690.69	811.04
Balance to Finance	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
Interest	50.00	62.45	50.00	62.45	60.20	74.75	70.04	87.50
Amount of Contract	1,050.00	1,062.45	1,050.00	1,062.45	1,060.20	1,074.75	1,070.04	1,087.50
Payments	87.50	70.83	87.50	70.83	88.35	71.65	89.17	72.50
Basic Cost of Financing (Interest and Insurance)	214.85	305.63	284.50	410.76	302.73	434.11	310.73	448.54
Dealer Reserve	18.00	20.49	15.40	20.98	18.00	21.00	18.00	23.00

8.00 ≠ 20% of $50.00

8.00 ≠ 20% of $62.45

1% of $1,000.00 ≠ 3.00 =
13.00
Bonus 500 Deal 2.40

1½ of 1,000.00 ≠ 3.50 =
18.50
Bonus 500 Deal 2.40

1½ of 1,000.00 ≠ 3.00

1-3/4% of 1,000.00 ≠ $3.50

1/2% of 1,000.00 ≠ 8.00 =
13.00
Bonus 500 Deal 5.00

1% of 1,000.00 ≠ 8.00 =
18.00
Bonus 500 Deal 5.00

FINANCE COST COMPARISON CHART - DETROIT TERRITORY
PASSENGER CAR
LESS THAN 50% DOWN PAYMENT - WITH INSURANCE

	Omaha		Universal Credit		Associates Inv.		Commercial Credit	
	12 Mo.	15 Mo.	12 Mo.	15 Mo.	12 Mo.	15 Mo.	12 Mo.	15 Mo.
Retail Selling Price	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00
Insurance	(12 Mo)24.00	(13-18)35.50	(Rev.→) (12 Mo)52.00	57.50 (13-15 Mo)73.50	(12 Mo)52.00	83.75	49.50	81.00 / 73.50 / 73.75 / 63.50
Time Price	1,124.00	1,135.50	(Rev.→) 1,152.00	1,157.50 1,173.50	1,152.00	1,183.75	1,149.50	1,181.00 / 1,173.50 / 1,173.75 / 1,163.50
Down Payment	404.00	415.50	(Rev.→) 432.00	437.50 453.50	432.00	463.75	429.50	461.00 / 453.50 / 453.75 / 443.50
Balance to Finance	720.00	720.00	720.00	720.00	720.00	720.00	720.00	720.00
Interest	*(5%)36.00	45.00	(5%)36.00	45.00	(5%)36.00	45.00	(**6%)43.20	54.00
Amount of Contract	756.00	765.00	756.00	765.00	756.00	765.00	763.20	774.00
Payments	63.00	51.00	63.00	51.00	63.00	51.00	63.60	51.60
Basic Cost of Financing (Interest & Insurance)	60.00	80.50	(Rev.→) 93.50 88.00	128.75 118.50	93.50 88.00	126.00 118.50	92.70 87.20	127.75 / 117.50
Per Reserve	15.20	17.00	12.60	16.70	13.80	16.10	16.60	20.20
	8.00 ÷ 20% of $36.00	8.00 ÷ 20% of $45.00	15 of $720.00 ÷ 3.00 = 10.20 Bonus(500 Deal) 2.40	14% of 720.00 ÷ 3.90 = 14.30 Bonus 500 Deal 2.40	14% of 720.00 ÷ 3.00	1-3/4% of 720.00 ÷ 3.90	1/2% of 720.00 ÷ 8.00 = 11.60 Bonus 500 Deal 5.00	14 of 720.00 ÷ 8.00 = 15.20 Bonus 5.00

* Omaha uses 4% Chart where down payment is 50% or more of Balance to Finance.
** Commercial Credit uses 6% (5% chart plus 1% added to cover personal insurance coverage).
Black figures show deal worked out on Rate Charts in effect March 1, 1946.
Red figures show changes resulting from revision of Rate Charts May 1, 1946.
NOTE: Omaha has not revised Rate Charts pending settlement with OPA Retail Selling Prices.

FINANCE COST COMPARISON CHART - DETROIT TERRITORY
PASSENGER CAR
LESS THAN 50% DOWN PAYMENT - WITH INSURANCE

	Omaha		Universal Credit		Associates Inv.		Commercial Credit	
	12 Mo.	15 Mo.	12 Mo.	15 Mo.	12 Mo.	15 Mo.	12 Mo.	15 Mo.
lling Price	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00
	(12 Mo)24.00	(13-18)35.50	(Rev.→) (12 Mo)52.00	57.50 (13-15 Mo)73.50	(12 Mo)52.00	83.75	49.50	81.00 / 73.50 / 73.75 / 63.50
e Price	1,124.00	1,135.50	(Rev.→) 1,152.00	1,157.50 1,173.50	1,152.00	1,183.75	1,149.50	1,181.00 / 1,173.50 / 1,173.75 / 1,163.50
nt	404.00	415.50	(Rev.→) 432.00	437.50 453.50	432.00	463.75	429.50	461.00 / 453.50 / 453.75 / 443.50
e Finance	720.00	720.00	720.00	720.00	720.00	720.00	720.00	720.00
	*(5%)36.00	45.00	(5%)36.00	45.00	(5%)36.00	45.00	(**6%)43.20	54.00
Contract	756.00	765.00	756.00	765.00	756.00	765.00	763.20	774.00
	63.00	51.00	63.00	51.00	63.00	51.00	63.60	51.60
s of & Insurance)	60.00	80.50	(Rev.→) 93.50 88.00	128.75 118.50	93.50 88.00	126.00 118.50	92.70 87.20	127.75 / 117.50
serve	15.20	17.00	12.60	16.70	13.80	16.10	16.60	20.20
	8.00 ÷ 20% of $36.00	8.00 ÷ 20% of $45.00	15 of $720.00 ÷ 3.00 = 10.20 Bonus(500 Deal) 2.40	14% of 720.00 ÷ 3.90 = 14.30 Bonus 500 Deal 2.40	14% of 720.00 ÷ 3.00	1-3/4% of 720.00 ÷ 3.90	1/2% of 720.00 ÷ 8.00 = 11.60 Bonus 500 Deal 5.00	14 of 720.00 ÷ 8.00 = 15.20 Bonus 5.00

ses 4% Chart where down payment is 50% or more of Balance to Finance.
cial Credit uses 6% (5% chart plus 1% added to cover personal insurance coverage).
ures show deal worked out on Rate Charts in effect March 1, 1946.
se show changes resulting from revision of Rate Charts May 1, 1946.
se has not revised Rate Charts pending settlement with OPA Retail Selling Prices.

Subscribed and sworn to before me this 24th day of May, A. D., 1946 (sgd) Norma E. Beckett, Notary Public, District of Columbia. My commission expires: 6/30/47.

[fol. 175] In United States District Court

[Title omitted.]

Affidavit in Support of Motion

State of Michigan,
County of Wayne, ss.

W. Earl Westen, being duly sworn, deposes and says that he is employed by the Ford Motor Company, respondent in the above entitled cause, as Chief Statistician of the Business Management Division of the General Sales Department; that he compiled the attached figures showing the comparative operation of financing plans of various finance companies with respect to the sales of new cars and trucks; that such figures were computed from charts supplied to him by the finance companies mentioned and from information supplied to him by various dealers; that the figures taken from such charts are accurately copied; and that the computations are correctly made.

Further deponent saith not.

W. Earl Westen

Subscribed and sworn to before me this 29th day of May, 1946. Archie Walter Brown, Notary Public, Wayne County, Michigan. My Commission Expires August 28, 1949. (Seal)

(Here follows 2 Photolithographs, side folios 176-177)

[fol. 178] In United States District Court

[Title omitted.]

Affidavit in Support of Motion

State of Michigan,
County of Wayne, ss.

Charles K. Warren, being duly sworn, deposes and says that he is the chief analyst for the Market Research Division of the Ford Motor Company and that the attached chart showing comparative sales of Ford products and the

products of other automobile manufacturing companies was prepared by him from the regular yearly reports compiled by the Motor Statistical Department of R. L. Polk and Company, Detroit, Michigan, designated as Polk National New Car Sales Service, Service E; that he is informed and believes that the figures contained in such report are prepared from registration data obtained from the respective departments of registration of the various states of the United States and are authentic and that the figures copied by him from such report are accurately copied.

Further deponent saith not.

Charles K. Warren

Subscribed and sworn to before me this 29th day of May, 1946. Archie Walter Brown, Notary Public, Wayne County, Michigan. My Commission Expires August 28, 1949. (Seal)

(Here follows 2 Photolithographs, side folios 179-180)

[fol. 181] IN UNITED STATES DISTRICT COURT

[Title omitted.]

PROOF OF MAILING

STATE OF MICHIGAN,
County of Wayne, ss.

BETTY HOLLAND, of the City of Detroit, in said county, being duly sworn, deposes and says that on the 31st day of May, A.D., 1946, she served a true copy of the Amendment of Motion to Suspend and Modify Provisions of Consent Decree together with Affidavits in Support Thereof, the original of which are attached hereto, upon Alexander N. Campbell, United States Attorney for the Northern District of Indiana; Wendell Berge, Assistant Attorney General, Department of Justice; Scheer, Scheer & Taylor; Samuel S. Isseks and Alphonse A. Laporte, Attorneys for Respondents, Commercial Investment Trust Corporation, et al., by depositing the same in the United States mail in the City of Detroit in sealed envelopes, which envelopes were addressed as follows:

PASSENGER CAR REGISTRATIONS

By Corporations

1932	
General Motors	41.5
Ford	23.9
Chrysler	17.4
All Others	17.2

1933	
General Motors	43.3
Chrysler	25.8
Ford	21.0
All Others	9.9

1934	
General Motors	39.8
Ford	28.2
Chrysler	22.9
All Others	9.1

1935	
General Motors	38.4
Ford	30.2
Chrysler	22.9
All Others	8.5

1936	
General Motors	43.1
Chrysler	25.0
Ford	22.4
All Others	9.5

1937	
General Motors	40.6
Chrysler	25.4
Ford	22.7
All Others	11.3

1938	
General Motors	44.8
Chrysler	25.0
Ford	20.5
All Others	9.7

1939	
General Motors	43.7
Chrysler	24.2
Ford	21.4
All Others	10.7

1940	
General Motors	47.6
Chrysler	23.7
Ford	18.9
All Others	9.8

1941	
General Motors	47.3
Chrysler	24.2
Ford	18.8
All Others	9.7

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NEW PASSENGER CAR REGISTRATIONS
1932 thru 1941

MAKE	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	10 Year Total	Yearly Average
1. CHEVROLET	322,860	487,493	534,906	656,698	930,250	768,040	464,337	598,341	853,529	880,346	6,483,800	648,380
2. FORD	258,927	311,113	539,528	826,519	748,554	765,933	363,688	481,496	542,755	602,013	5,431,526	543,153
3. PLYMOUTH	111,926	249,667	302,557	382,985	499,580	462,268	286,241	348,807	440,093	452,187	3,536,311	353,631
4. BUICK	49,708	43,809	63,067	87,635	160,687	205,297	166,380	218,995	295,513	308,615	1,599,706	155,970
5. DODGE	28,111	86,062	90,139	178,770	248,518	255,258	104,881	176,585	197,252	215,563	1,581,139	158,114
6. PONTIAC	47,926	85,348	72,645	140,122	171,669	212,403	98,399	159,836	235,815	286,123	1,510,286	151,029
7. OLDSMOBILE	24,128	35,295	71,676	149,375	178,488	188,306	92,398	146,412	201,256	230,367	1,317,701	131,770
8. MERCURY *								65,884	80,418	81,874	228,176	76,059
9 HUDSON	37,419	38,777	59,817	75,425	99,296	90,043	40,889	62,855	79,979	73,261	657,761	65,776
10. STUDEBAKER	41,968	36,242	41,560	39,573	67,835	70,048	41,504	84,660	102,281	114,331	640,002	64,000
11. CHRYSLER	26,016	28,677	28,052	40,536	58,698	91,622	46,184	63,956	100,117	143,025	626,883	62,688
12. PACKARD	11,058	9,081	6,552	37,653	68,772	95,455	49,163	62,005	73,794	69,853	483,186	48,319
13. DESOTO	25,311	21,260	11,447	26,952	45,088	74,424	35,259	51,951	71,943	91,004	454,639	45,464
14. NASH	20,233	11,353	23,616	35,184	43,070	70,571	31,814	54,050	52,853	77,824	420,568	42,057
15. CADILLAC	10,117	7,612	10,081	18,467	25,758	40,140	26,371	35,287	38,564	60,242	272,639	27,264
16. WILLYS	25,898	15,667	6,576	10,439	12,423	51,411	13,012	14,734	21,418	22,102	193,680	19,368
17. LINCOLN	3,179	2,112	2,061	2,370	15,567	25,243	16,991	19,940	21,004	18,769	127,236	12,724
18. MISC.	51,614	37,226	33,277	35,205	30,244	17,290	6,675	7,583	7,321	3,867	230,302	23,030
U.S. TOTAL	1,096,399	1,493,794	1,888,557	2,743,908	3,404,497	3,483,752	1,891,021	2,653,377	3,415,905	3,731,146	25,795,341	2,579,554

* 3 Years Only

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Alexander N. Campbell
United States Attorney for
the Northern District of
Indiana
South Bend, Indiana

Wendell Berge
Assistant Attorney General
Department of Justice
Washington, D. C.

Scheer, Scheer & Taylor
408 Oddfellows Building
South Bend, Indiana

Mr. Alphonse A. Laporte
One Park Avenue
New York, New York

Mr. Samuel S. Isseks
30 Broad Street
New York, New York

[fol. 182] upon which envelopes the United States postage was fully prepaid.

Betty Holland (sgd.) Betty Holland

Subscribed and sworn to before me this 4th day of June, A.D., 1946. Anna P. Widrig, Notary Public, Wayne County, Michigan. My commission expires: Sept. 9, 1946.

[fol. 183] And afterwards, to wit, on the 22nd day of June, 1946, the following further proceedings were had in the above entitled cause, to wit:

Comes now respondent, Ford Motor Company, and files an order on motion of Government for extension of Bar against affiliation, and on motion of respondents to modify and suspend consent decree, containing proposed findings of Fact and conclusions of Law, together with proof of service of same, which Order and proof of service read in the words and figures following, to wit:

[fol. 184] In United States District Court.

[Title omitted.]

[File endorsement omitted.]

Order on Motion of Government for Extension of Bar Against Affiliation and on Motion of Respondents to Modify and Suspend Consent Decree—Filed June 22, 1946.

At a session of said Court, held in the Court House in the City of Hammond, State of Indiana, on the —— day of ——, A. D., 1946.

Present: Hon. Patrick T. Stone, District Judge.

The United States has moved that this Court extend the period provided in paragraph 12 of the consent decree

entered in this cause on November 15, 1938 beyond January 1, 1946, the date to which it was previously extended by consent of the parties, and respondent Ford Motor Company has opposed this motion and in turn moved that this Court enter an order pursuant to paragraph 12 that nothing in said consent decree shall preclude said respondent from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a thereof. In addition, Respondent Ford Motor Company has moved pursuant to paragraph 12a of said decree that the provisions of subparagraphs (i) and (k) of paragraph 6 of said decree be suspended until similar provisions are imposed upon General Motors Corporation and that subparagraph (e) of said paragraph 6 be modified to the extent necessary to permit said respondent to do those things prohibited by said subparagraph (i) and (k) which might also be prohibited by said subparagraph (e), such modification [fol. 185] to continue until provisions similar to said subparagraph (e) without such modification are imposed on General Motors Corporation. Also, all respondent Finance companies have moved for suspension of subparagraph (d) of paragraph 7 of said decree until a similar provision is imposed upon General Motors Acceptance Corporation.

All of said motions have been heard upon affidavits and arguments of counsel in open court, and the Court finds:

(1) That the purpose of the second unnumbered paragraph of paragraph 12 of said decree was not only to protect Respondent, Ford Motor Company, from the competitive disadvantage that might result from the continued ownership of General Motors Acceptance Corporation by General Motors Corporation if the civil suit of The United States against General Motors Corporation to require it to divest itself of General Motors Acceptance Corporation was delayed, but also to give Respondent, Ford Motor Company, an opportunity to defend itself on the question of affiliation after the time limit set forth in such paragraph had expired.

(2) That the time limit set forth in such paragraph has expired and Respondent, Ford Motor Company should be free to acquire and operate a finance company if it desires to do so.

(3) That the suit instituted by the United States against General Motors Corporation to require that corporation to divest itself of ownership of General Motors Acceptance Corporation is still pending and has not been reached for trial, and that this amounts to undue delay;

(4) That Respondent, Ford Motor Company, is being placed at a competitive disadvantage by the further continuance of the bar against affiliation contained in the consent decree in this cause while General Motors Corporation still retains ownership and control of General Motors Acceptance Corporation;

[fol. 186] (5) That Respondent, Ford Motor Company, should be free of said bar against affiliation so that it may proceed by such means as are available to it within the framework of said decree as modified hereby to overcome such competitive disadvantage;

(6) That none of the agreements, acts or practices enjoined in subparagraphs (i) and (k) of paragraph 6 of said decree and in subparagraph (d) of paragraph 7 of said decree and performed by General Motors Corporation was held by the trial court in its instructions to the jury (in the criminal proceeding instituted against General Motors Corporation by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039) to constitute a proper basis for the return of a general verdict of guilty;

(7) That none of the restraints and requirements contained in said subparagraphs have been imposed in substantially identical terms upon General Motors Corporation and its subsidiaries or General Motors Acceptance Corporation and its subsidiaries either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of subparagraph 12(a) of said decree;

(8) That respondents are at a competitive disadvantage because General Motors Corporation and General Motors Acceptance Corporation are still free to do the things that respondents are enjoined by said subparagraph from doing.

Therefore, it is ordered, adjudged and decreed as follows:

1. The motion of the United States for further extension of the bar against affiliation be and the same hereby is denied.

2. Nothing in said consent decree shall preclude respondent, Ford Motor Company, from acquiring and re-[fol. 187] taining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree as modified herein or by any other order of modification or suspension of said decree that may be entered pursuant to paragraph 12(a) thereof.

3. Each of the restraints and requirements contained in subparagraphs (i) and (k) of paragraph 6 of said decree be and the same hereby is suspended until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and the restraints contained in subparagraph (d) of paragraph 7 of said decree be and they hereby are suspended until they shall be imposed upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review or (z) by decree of such court which, although subject to further review, continues effective.

4. Each of the requirements and restraints contained in subparagraph (e) of paragraph 6 of said decree be and the same hereby are modified to such an extent that respondent, Ford Motor Company, shall not be required to do anything or be restrained from doing anything pursuant to said subparagraph, which prior to the entry of this order and decree it might have been required to do or restrained from doing by subparagraphs (i) and (k) of said paragraph, such modification to continue, however,

only until the provisions of said subparagraph (e) without such modifications are imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review or (z) by decree of such court which, although subject to further review, continues effective.

—— ——, District Judge.

[fol. 188] IN UNITED STATES DISTRICT COURT

[Title omitted]

(Filed endorsement omitted)

PROOF OF SERVICE OF PROPOSED ORDER ON MOTION OF GOVERNMENT FOR EXTENSION OF BAR AGAINST AFFILIATION AND ON MOTION OF RESPONDENTS TO MODIFY AND SUSPEND CONSENT DECREE, TOGETHER WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED THEREIN AND NOTICE OF SUBMISSION THEREOF FOR SIGNATURE—Filed July 3, 1946

STATE OF MICHIGAN,
County of Wayne, ss.

BERNADETTE LABELLE, of the City of Detroit, in said County, being duly sworn, deposes and says that on the 24th day of June, A.D., 1946, she served a copy of the Proposed Order on Motion of Government for Extension of Bar Against Affiliation and On Motion of Respondents to Modify and Suspend Consent Decree, together with findings of fact and conclusions of law contained therein and Notice of Submission thereof for Signature, a copy of each of which is hereto attached, upon Alexander N. Campbell, United States Attorney for the Northern District of Indiana; Wendell Berge, Assistant Attorney General, Department of Justice; Scheer, Scheer & Taylor; Samuel S. Isseks and Alphonse A. Laporte, Attorneys for Respondents, Commercial Investment Trust Corporation, et al., by depositing the same in the United States mail in the City of Detroit in sealed envelopes, which envelopes were addressed as follows:

Alexander N. Campbell
United States Attorney for the Northern District of Indiana
South Bend, Indiana

Wendell Berge
Assistant Attorney General
Department of Justice
Washington, D. C.

[fol. 189]

Scheer, Scheer & Taylor
408 Oddfellows Building
South Bend, Indiana

Mr. Samuel S. Isseks
30 Broad Street
New York, New York

Mr. Alphonse A. Laporte
One Park Avenue
New York, New York

upon which envelopes the United States postage was fully prepaid.

Bernadette LaBelle

Subscribed and sworn to before me this 25th day of June, A.D., 1946, Estelle C. Pylar, Notary Public, Wayne County, Michigan. My commission expires June 21, 1949.

[fol. 190] In United States District Court

(Title omitted.)

Notice of Submission of Proposed Order

To: Alexander N. Campbell, United States Attorney for the Northern District of Indiana, South Bend, Indiana; Wendell Berge, Assistant Attorney General, Department of Justice, Washington, D. C.

To: Scheer, Scheer & Taylor, 408 Oddfellows Building, South Bend, Indiana; Samuel S. Isseks, 30 Broad Street, New York, New York; Alphonse A. Laporte, One Park Avenue, New York, New York, Attorneys for Respondents Commercial Investment Trust Corporation, et al.

Please take notice that the proposed order, with findings of fact and conclusions of law contained therein, a copy of which is hereto attached has been submitted by respondent Ford Motor Company to the Clerk of the

[fol. 191] Court for signature by Honorable Patrick T. Stone, United States District Judge.

Dated: June 24, 1946.

——— ———, Clifford B. Longley, ——— ———, Wallace R. Middleton, ——— ———, Frederick C. Nash, 1400 Buhl Building, Detroit, Michigan, Attorneys for Respondent, Ford Motor Company.

[fol. 192] In United States District Court

(Title omitted.)

Order on Motion of Government for Extension of Bar Against Affiliation and on Motion of Respondents to Modify and Suspend Consent Decree.

At a session of said Court, held in the Court House in the City of Hammond, State of Indiana, on the day of , A.D., 1946.

Present: Hon. Patrick T. Stone, District Judge.

The United States has moved that this Court extend the period provided in paragraph 12 of the consent decree entered in this cause on November 15, 1938 beyond January 1, 1946, the date to which it was previously extended by consent of the parties, and respondent Ford Motor Company has opposed this motion and in turn moved that this Court enter an order pursuant to paragraph 12 that nothing in said consent decree shall preclude said respondent from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a thereof. In addition, Respondent Ford Motor Company has moved pursuant to paragraph 12a of said decree that the provisions of subparagraphs (i) and (k) of paragraph 6 of said decree be suspended until similar provisions are imposed upon General Motors Corporation and that subparagraph (e) of said paragraph 6 be modified to the extent necessary to permit said respondent to do those things prohibited by

said subparagraph (i) and (k) which might also be prohibited by said subparagraph (e), such modification to [fol. 193] continue until provisions similar to said subparagraph (e) without such modification are imposed on General Motors Corporation. Also, all respondent Finance companies have moved for suspension of subparagraph (d) of paragraph 7 of said decree until a similar provision is imposed upon General Motors Acceptance Corporation.

All of said motions have been heard upon affidavits and arguments of counsel in open court, and the Court finds:

(1) That the purpose of the second unnumbered paragraph of paragraph 12 of said decree was not only to protect Respondent, Ford Motor Company, from the competitive disadvantage that might result from the continued ownership of General Motors Acceptance Corporation by General Motors Corporation if the civil suit of The United States against General Motors Corporation to require it to divest itself of General Motors Acceptance Corporation was delayed, but also to give Respondent, Ford Motor Company, an opportunity to defend itself on the question of affiliation after the time limit set forth in such paragraph had expired.

(2) That the time limit set forth in such paragraph has expired and Respondent, Ford Motor Company should be free to acquire and operate a finance company if it desires to do so.

(3) That the suit instituted by the United States against General Motors Corporation to require that corporation to divest itself of ownership of General Motors Acceptance Corporation is still pending and has not been reached for trial, and that this amounts to undue delay;

(4) That Respondent, Ford Motor Company, is being placed at a competitive disadvantage by the further continuance of the bar against affiliation contained in the consent decree in this cause while General Motors Corporation still retains ownership and control of General Motors Acceptance Corporation;

[fol. 194] (5) That Respondent, Ford Motor Company, should be free of said bar against affiliation so that it may

proceed by such means as are available to it within the framework of said decree as modified hereby to overcome such competitive disadvantage;

(6) That none of the agreements, acts or practices enjoined in subparagraphs (i) and (k) of paragraph 6 of said decree and in subparagraph (d) of paragraph 7 of said decree and performed by General Motors Corporation was held by the trial court in its instructions to the jury (in the criminal proceeding instituted against General Motors Corporation by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039) to constitute a proper basis for the return of a general verdict of guilty;

(7) That none of the restraints and requirements contained in said subparagraphs have been imposed in substantially identical terms upon General Motors Corporation and its subsidiaries or General Motors Acceptance Corporation and its subsidiaries either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of subparagraph 12(a) of said decree;

(8) That respondents are at a competitive disadvantage because General Motors Corporation and General Motors Acceptance Corporation are still free to do the things that respondents are enjoined by said subparagraph from doing.

Therefore, it is ordered, adjudged and decreed as follows:

1. The motion of the United States for further extension of the bar against affiliation be and the same hereby is denied.

2. Nothing in said consent decree shall preclude respondent, Ford Motor Company, from acquiring and re- [fol. 195] taining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree as modified herein

or by any other order of modification or suspension of said decree that may be entered pursuant to paragraph 12(a) thereof.

3. Each of the restraints and requirements contained in subparagraphs (i) and (k) of paragraph 6 of said decree be and the same hereby is suspended until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and the restraints contained in subparagraph (d) of paragraph 7 of said decree be and they hereby are suspended until they shall be imposed upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review or (z) by decree of such court which, although subject to further review, continues effective.

4. Each of the requirements and restraints contained in subparagraph (e) of paragraph 6 of said decree be and the same hereby are modified to such an extent that respondent, Ford Motor Company, shall not be required to do anything or be restrained from doing anything pursuant to said subparagraph, which prior to the entry of this order and decree it might have been required to do or restrained from doing by subparagraphs (i) and (k) of said paragraph, such modification to continue, however, only until the provisions of said subpafagraph (e) without such modifications are imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review or (z) by decree of such court which, although subject to further review, continues effective.

——, District Judge.

[fol. 196] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

No. 1039

UNITED STATES OF AMERICA

v.

GENERAL MOTORS CORPORATION ET AL.

Indictment

James R. Fleming, United States Attorney. Russell Hardy, Special Assistant to the Attorney General.

Returned May 27, 1938

[fol. 196-1] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

FEBRUARY TERM, A. D. 1938

THE UNITED STATES OF AMERICA

v.

1. General Motors Corporation
2. General Motors Sales Corporation
3. General Motors Acceptance Corporation
4. General Motors Acceptance Corporation of Indiana, Incorporated
5. E. W. Berger
6. George F. Benkhart
7. M. E. Coyle
8. James D. Deane

9. Nelson C. Dezendorf
10. August Freise
11. Richard H. Grant
12. Roy Hill
13. W. E. Holler
14. W. F. Hufstader
15. H. J. Klingler
16. William S. Knudsen
17. Russell Lesher
18. Ralph W. Moore
19. W. J. Mougey
20. Arthur B. Purvis
21. John J. Schumann, Jr.
22. Alfred P. Sloan, Jr.
23. G. I. Smith

[fols. 196-2] The Grand Jurors of the United States, within and for the Northern District of Indiana, impaneled, sworn, and charged in said Court at the term and division aforesaid, to inquire for the United States for the Northern District of Indiana, upon their oaths charge and present that:

1. For many years heretofore, to and including the day of the finding and presentation of this indictment, a very large part of the supply of automobiles in the United States has been produced by General Motors Corporation, Ford Motor Company, and Chrysler Corporation and corporations controlled by Chrysler Corporation.

2. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, approximately sixteen million new automobiles have been made and sold at wholesale and retail in the United States. General Motors Corporation has made approximately seven millions of said automobiles, Ford Motor Company approximately four millions, and Chrysler Corporation and its controlled corporations approximately four millions. The remaining one million automobiles have been made by from twelve to fifteen other manufacturers.

3. The automobiles made by General Motors Corporation have been manufactured at plants in the States of Michigan, Wisconsin, Missouri, Georgia, New York, New

Jersey, and California. Those made by the Ford Motor Company have been manufactured at plants in the States [fol. 196-3] of Michigan, Minnesota, Illinois, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Virginia, Tennessee, Kentucky, Missouri, Georgia, Texas, and California. Those made by Chrysler Corporation and its controlled corporations have been manufactured at plants in the States of Michigan, Indiana, and California.

4. During the three years next preceding the finding and presentation of this indictment there have been approximately forty thousand persons and corporations in the several States, known as automobile dealers, who have been engaged in the business of buying and selling the automobiles made by General Motors Corporation, Ford Motor Company, and Chrysler Corporation and its controlled corporations. Approximately fifteen thousand of said dealers located in all of the States, and known and referred to in this indictment as General Motors dealers, have been buying and selling automobiles made by General Motors Corporation.

5. General Motors Sales Corporation has been the selling agency for the automobiles made by General Motors Corporation, and has been regularly and continuously making contracts with General Motors dealers for the sale of the automobiles made by General Motors Corporation. In pursuance of said contracts, the automobiles made by General Motors Corporation, as aforesaid, have been regularly and continuously transported from the aforesaid places of [fol. 196-4] manufacture to dealers located in other States, including many dealers located in the Northern District of Indiana.

6. During the three years next preceding the finding and presentation of this indictment, and for many years theretofore, General Motors Corporation, General Motors Sales Corporation, Ford Motor Company and Chrysler Corporation and its controlled corporations, have required that payment for all automobiles sold by them be on a cash basis and before the transportation and shipment thereof from the places where manufactured; and in pursuance of such requirement all of said automobiles have been paid for before such transportation and shipment.

7. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, approximately twelve and a half billion dollars have been paid to automobile manufacturers for automobiles transported and shipped to dealers. Approximately six and a half billion dollars of said sum have been paid for automobiles made by General Motors Corporation, two and a half billion for automobiles made by Ford Motor Company and two and a half billion for automobiles made by Chrysler Corporation and its controlled corporations.

8. Because of the high unit prices of automobiles which have been demanded and procured by General Motors Corporation, General Motors Sales Corporation, Ford Motor Company, and Chrysler Corporation and its controlled cor-
[fol. 196-5] porations, because said corporations have required payment to be made on a cash basis before the transportation, shipment, and delivery of automobiles to dealers, and because it has been necessary for the great majority or dealers to procure a stock of automobiles varying in color, body style, and otherwise, far beyond their financial ability to pay for on a cash basis as required by said corporations, a large supply of money has been regularly and continuously necessary and has been regularly and continuously furnished and used to pay said corporations for the automobiles transported, shipped and delivered to the dealers in pursuance of the contracts aforesaid.

9. For many years heretofore, to and including the day of the finding and presentation of this indictment, many companies, called automobile finance companies, have been created and organized, and have been regularly and continuously engaged in furnishing the money which has been necessary, as aforesaid, and which has been paid to said corporations for the automobiles aforesaid.

10. During the three years next preceding the finding and presentation of this indictment, the great majority of the dealers, in order to procure and pay for the automobiles, have been regularly and continuously entering into contracts and arrangements with certain so-called affiliated automobile finance companies, that is to say, General Motors Acceptance Corporation, General Motors Acceptance Cor-
[fol. 196-6] poration of Indiana, Incorporated, Universal

Credit Corporation and corporations controlled by it, and Commercial Credit Company and corporations controlled by it, in the performance of which contracts said finance companies have furnished a very large part of the money paid to General Motors Corporation, General Motors Sales Corporation, Ford Motor Company, and Chrysler Corporation and its controlled corporations, for the automobiles sold to the dealers.

11. In the case of Cadillac, LaSalle, Buick, Oldsmobile, Pontiac, and Chevrolet automobiles, General Motors Corporation and General Motors Sales Corporation have transferred to General Motors Acceptance Corporation and General Motors Acceptance Corporation of Indiana, Incorporated, title to and ownership thereof at and before the transportation and shipment of said automobiles from the places of manufacture.

12. In the case of Ford automobiles, Ford Motor Company has transferred to Universal Credit Corporation and corporations controlled by it, title to and ownership of the automobiles at and before the transportation and shipment of said automobiles from the places of manufacture.

13. In the case of Chrysler, Dodge, DeSoto, and Plymouth automobiles, Chrysler Corporation and corporations controlled by it have transferred to Commercial Credit Company and corporations controlled by it, title to and ownership of the automobiles at and before the transportation and [fols. 196-7] shipment of said automobiles from the places of manufacture.

14. In pursuance of the aforesaid contracts and arrangements, the custody and possession, but not the title and ownership, of the automobiles have been taken and retained by the dealers until purchasers therefor in retail transactions have been procured.

15. During the three years next preceding the finding and presentation of this indictment, many of the dealers, in order to procure and pay for automobiles, have been regularly and continuously entering into contracts and arrangements with approximately Three Hundred Seventy-five (375) corporations, known as independent automobile finance companies, located and doing business in

all of the States, in the performance of which contracts the finance companies have furnished a large part of the money paid to General Motors Corporation, General Motors Sales Corporation, Ford Motor Company, and Chrysler Corporation and its controlled corporations, for the automobiles sold to the dealers.

16. General Motors Corporation, General Motors Sales Corporation, Ford Motor Company, and Chrysler Corporation and its controlled corporations, have refused to transfer to any of said independent automobile finance companies, title to and ownership of automobiles.

17. In the further performance of said contracts the dealers have transferred to said independent [fols. 196-8] finance companies the title to and ownership of the automobiles at and before their transportation and shipment from the places of manufacture; and the custody and possession of the automobiles have been taken and retained by the dealers until purchasers therefor in retail transactions have been procured.

18. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, said affiliated and independent finance companies have furnished approximately five and a half billion dollars in the aforesaid transactions. The so-called affiliated companies have furnished approximately four and a half billion dollars, and the so-called independent companies have furnished approximately one billion.

19. Pursuant to the aforesaid contracts between dealers and affiliated and independent automobile finance companies, title to the automobiles has remained in the finance companies, and said automobiles have not been removed, used, demonstrated, or sold by the dealers to purchasers in retail transactions, until payment has been made to the finance companies of the money furnished by them for the procurement of the automobiles as aforesaid.

20. For many years heretofore, to and including the day of the finding and presentation of this indictment, the dealers have been regularly and continuously making contracts and arrangements with so-called retail pur- [fols. 196-9] chasers for the sale to them of all of said

automobiles; and in pursuance of said contracts and arrangements all of said automobiles have been sold and delivered to such purchasers.

21. The great majority of the retail sales of said automobiles have been made upon terms in which part of the price has been paid at the time of the sale, a used automobile has been taken in trade, and the remainder of the price has been paid in installment payments. Such transactions will be hereinafter referred to as time sales.

22. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, approximately six and a half million automobiles have been sold in such time sales.

23. Because of the high unit prices for automobiles which have been demanded and procured in retail transactions, because the manufacturers aforesaid have required payment to be made on a cash basis before transportation, shipment and delivery of automobiles, as aforesaid, because it has been necessary for all or almost all of the dealers to procure the full purchase price of the automobile at the time of each retail transaction, and because the great majority of retail purchasers of automobiles have not had the financial ability to pay on a cash basis, a large supply of money has been regularly and continuously necessary, and has been regularly and continuously furnished and used to pay the manufacturers, dealers and finance companies aforesaid for the automobiles aforesaid.

[fol. 196-10] 24. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, said finance companies have furnished approximately six billion dollars for such time sales. General Motors Acceptance Corporation and General Motors Acceptance Corporation of Indiana, Incorporated, have furnished approximately two billion dollars of such sum, the other affiliated finance companies named in paragraph ten (10) of this indictment have furnished approximately two and a half billion dollars, and the approximately Three Hundred Seventy-five (375) independent finance companies have furnished approximately one and a half billion dollars.

25. In all or almost all of the aforesaid retail sales of new automobiles, it has been necessary for the dealers to take, and they have taken, in the transactions of sale, and as part of the consideration for the new automobiles, used automobiles owned by the purchasers of the new automobiles.

26. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, approximately eight million used automobiles have been taken in trade by the dealers in the manner aforesaid, and the dealers have been regularly and continuously making contracts and arrangements with other persons for the sale of said used automobiles.

27. Because of the high unit prices of said used automobiles, because the great majority of pur- [fol. 196-11] chasers thereof have not had the financial ability to pay on a cash basis, and because it has been necessary in order to carry on the trade and commerce in automobiles herein described for the dealers to quickly dispose of said used automobiles and to procure the purchase price therefor at the time of the sale, a large supply of money has been regularly and continuously necessary for making said sales, and has been regularly and continuously furnished for that purpose by the automobile finance companies in the manner aforesaid.

28. The Grand Jurors aforesaid, upon their oath aforesaid, do further present that General Motors Corporation and General Motors Sales Corporation are corporations under the laws of the State of Delaware, General Motors Acceptance Corporation is a corporation under the laws of the State of New York, and General Motors Acceptance Corporation of Indiana, Incorporated, is a corporation under the laws of the State of Indiana; that at all times stated in this indictment General Motors Corporation, General Motor Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Incorporated, have had branch offices and places of business in almost all of the several States, including the State of Indiana, and the Northern District thereof, at which they have had divers officers, employees, representatives, and agents actively engaged in the man- [fol. 196-12] agement, direction, and control of their affairs

and business and of the interstate trade and commerce herein described.

29. Whenever in this indictment reference is made to General Motors Acceptance Corporation, it is intended to include General Motors Acceptance Corporation of Indiana, Incorporated.

30. Said General Motors Corporation, General Motors Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Incorporated, have been acting together in and in connection with the manufacturing, selling, financing the sale of, and distributing Cadillac, La Salle, Buick, Oldsmobile, Pontiac, and Chevrolet automobiles, herein referred to as General Motors automobiles, and in selling, financing the sale of, and distributing used automobiles of any make sold and handled by General Motors dealers, as described in this indictment.

31. General Motors Corporation, General Motors Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Incorporated, are made defendants to this indictment.

32. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that said defendant corporations, at all times stated in this indictment, have had divers officers, employees, representatives, and agents, who have been actively engaged in the management, direc-
[fol. 196-13] tion, and control of the affairs and business of said corporations in and in connection with the interstate trade and commerce herein described, and that a list of the names of such officers, employees, representatives and agents, so far as they are known to said Grand Jurors (Christian names unknown to said Grand Jurors being indicated by initial letters), is as follows:

1. E. W. Berger
2. George F. Benkhart
3. M. E. Coyle
4. James D. Deane
5. Nelson C. Dezendorf
6. August Freise
7. Richard H. Grant
8. Roy Hill
9. W. E. Holler
10. W. F. Hufstader
11. H. J. Klingler
12. William S. Knudsen
13. Russell Lesher
14. Ralph W. Moore
15. W. J. Mougey
16. Arthur B. Purvis
17. John J. Schumann, Jr.
18. Alfred P. Sloan, Jr.
19. G. L. Smith

33. Said persons are made defendants to this indictment.

34. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that continuously for many years heretofore, to and including the day of the finding and presentation of this indictment, at and within the Northern District of Indiana, and in the aforesaid division thereof, said defendants and other persons and corporations to the Grand Jurors unknown, unlawfully have engaged in a conspiracy in restraint of the aforesaid trade and commerce among the several States in Cadillac, La [fol. 196-14] Salle, Buick, Oldsmobile, Pontiac, and Chevrolet automobiles; and, the defendants have conspired to do all acts and things, and to use all means necessary and appropriate to make said restraint effective, including the means, acts, and things hereinafter more particularly alleged, and other means, acts, and things to the Grand Jurors unknown.

35. It has been a purpose of the defendants and an object of said conspiracy to procure, monopolize and keep within their control to the greatest extent possible, and to the exclusion of all other persons and corporations, the business of financing the trade and commerce in Cadillac, LaSalle, Buick, Oldsmobile, Pontiac and Chevrolet automobiles, and in used automobiles of any make sold and handled by General Motors dealers.

36. As a part of said conspiracy, the defendants have arranged and agreed among themselves—

37. To require dealers to promise and agree to deal with General Motors Acceptance Corporation for financing the purchases and sales of automobiles, as a condition to entering into contracts for the sale, transportation and delivery of automobiles to dealers, as aforesaid.

38. To require dealers to promise and agree not to deal with any automobile finance company other than General Motors Acceptance Corporation for financing the purchases and sales of automobiles, as a condition to entering into contracts for the sale, transportation and delivery of automobiles to dealers, as aforesaid.

[fol. 196-15] 39. To make all contracts for automobiles with dealers for a term of one year only, and to reserve

therein the right to cancel and terminate the same, without cause and upon short notice, in order to exercise said right in cases where dealers shall fail and refuse to have purchases and sales of automobiles financed by General Motors Acceptance Corporation, and in cases where dealers shall have purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

40. To threaten, suggest and intimate to dealers that contracts for automobiles with them may and will be cancelled and terminated in cases where the dealers fail and refuse to have purchases and sales of automobiles financed by General Motors Acceptance Corporation, and in cases where dealers have had purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

41. To cancel and terminate contracts for automobiles with dealers in cases where the dealers fail and refuse to have purchases and sales of automobiles financed by General Motors Acceptance Corporation, and in cases where dealers have had purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

42. To refuse and fail to furnish, transport and deliver automobiles to dealers who have refused and failed to [fol. 196-16] have purchases and sales of automobiles financed by General Motors Acceptance Corporation.

43. To refuse and fail to furnish, transport and deliver automobiles to dealers who have had purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

44. To examine and inspect the books, records and accounts of dealers for the purpose of procuring information relative to the financing of purchases and sales of automobiles by automobile finance companies other than General Motors Acceptance Corporation.

45. To coerce and compel dealers to permit the defendants and their agents to examine and inspect the books, records, and accounts of the dealers for the purpose of procuring information relative to the financing of pur-

chases and sales of automobiles by automobile finance companies other than General Motors Acceptance Corporation.

46. To coerce and compel dealers to disclose, furnish, and report information relative to the financing of purchases and sales of automobiles by automobile finance companies other than General Motors Acceptance Corporation.

47. To procure information from the servants and employees of dealers, relative to the financing of purchases and sales of automobiles by automobile finance companies [fol. 196-17] other than General Motors Acceptance Corporation, secretly, covertly, and without the knowledge of the dealers, and sometimes by means of bribery and otherwise.

48. To require and demand of dealers that they explain and justify the financing of purchases and sales of automobiles by automobile finance companies other than General Motors Acceptance Corporation.

49. To coerce and compel dealers to refrain from having the purchases and sale of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation, by any and all other means which may be deemed by the defendants to be necessary, appropriate, and effective to that end, which other means are to the Grand Jurors unknown.

50. To give, furnish, accord, and make available to dealers having purchases and sales of automobiles financed by General Motors Acceptance Corporation services, facilities, privileges, favors, conveniences, and other preferential treatment, in and in connection with financing the purchase and sale, transportation, and delivery of automobiles, and to refuse the same to dealers having purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

51. To delay the transportation, shipment, and delivery of automobiles to dealers having the purchases and sales [fol. 196-18] of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

52. To discriminate against dealers having purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation, and in favor of dealers having such purchases and sales financed by General Motors Acceptance Corporation, with regard to the number, model, color, and style of automobiles transported and delivered to them, with regard to the time of transportation and delivery thereof, and with regard to the manner and form, and time and place of payment therefor.

53. To give, furnish, accord, and make available to General Motors Acceptance Corporation places, offices, and quarters in the plants, factories, offices, and quarters of General Motors Corporation, General Motors Sales Corporation, and of corporations affiliated with and controlled by them, for engaging in and acquiring the business of financing the purchase, sale, transportation, and delivery of automobiles to dealers; and to refuse the same to any other automobile finance company.

54. To give, furnish, accord, and make available to General Motors Acceptance Corporation information relative to the purchase and sale, and transportation and delivery of automobiles to dealers, including information relative to the description and identification of such automobiles; and to refuse the same to any other automobile finance company.

[fol. 196-19] 55. To give, furnish, accord, and make available to General Motors Acceptance Corporation any and all contracts, instruments, and other writings, requested, necessary and appropriate for its security and protection in and in connection with financing the purchase and sale, transportation and delivery of automobiles to dealers, and to refuse the same to any other automobile finance company.

56. To transfer directly to General Motors Acceptance Corporation the title to automobiles before the transportation and delivery thereof to dealers, for the protection and security of General Motors Acceptance Corporation in and in connection with financing the purchase and sale, and transportation and delivery thereof; and to refuse the same to any other automobile finance company.

57. To make and enforce discriminatory, onerous, and unreasonable requirements relative to the manner, form, and time of payment for automobiles, for application to all automobile finance companies except General Motors Acceptance Corporation, and to dealers having the purchase and sale of automobiles financed by such companies.

58. To advertise, endorse, recommend and promote, and to coerce and require dealers to advertise, recommend and promote, the use of the automobile financing services, plans and facilities of General Motors Acceptance Corporation.

59. To coerce and require dealers not to advertise, recommend and promote, the use of the auto- [fol. 196-20] mobile financing services, plans and facilities of any automobile finance company other than General Motors Acceptance Corporation.

60. To establish and fix a price or charge to be collected by General Motors Acceptance Corporation from purchasers of Cadillac, LaSalle, Buick, Oldsmobile, Pontiac and Chevrolet automobiles, and of used automobiles handled by General Motors dealers, in all transactions financed by those corporations (said price or charge being known as the GMAC differential); and to pay to the dealer a substantial part thereof, as a rebate, participation and payment for diverting the business of financing such purchases to General Motors Acceptance Corporation and away from other automobile finance companies.

61. To regularly and continuously advertise and represent to purchasers of said automobiles that no such rebates, participations and payments have been and will be included in, and paid out of, such differential; and to induce, assist and require dealers to make, and join with and assist the defendants in making such representation.

62. To regularly and continuously conceal, and induce, assist and require dealers to conceal, from purchasers of said automobiles, the fact that such rebates, participations and payments have been and will be included in and paid out of the GMAC differential.

[fol. 196-21] 63. The defendants originated, introduced,

and began the practice of making said rebates, participations and payments to dealers in or about the year 1925, and have regularly and continuously engaged therein from then to and including the day of the finding and presentation of this indictment.

64. The effect of said practice has been to make it necessary for other automobile finance companies, in order to continue in the business of financing transactions in General Motors automobiles, to engage in the same practice.

65. During the period from the year 1925 to and including the day of the finding and presentation of this indictment, General Motors Acceptance Corporation has paid to dealers, as such rebates, participations and payments, more than one hundred million dollars, and for the year 1937 more than fifteen million dollars.

66. During the period from the year 1925 to and including the day of the finding and presentation of this indictment, all automobile finance companies, so far as to the Grand Jurors known, have paid to dealers, as such rebates, participations and payments, more than three hundred million dollars, and for the year 1937 more than sixty million dollars.

67. For the purpose of effectuating the aforesaid conspiracy, for many years heretofore, to and including the [fol. 196-22] three years next preceding the finding and presentation of this indictment, at and within the Northern District of Indiana, and the aforesaid division thereof, said defendants have regularly and continuously carried out, performed, engaged in and committed all of the arrangements, agreements, discriminations, threats, requirements, and other acts, practices and things herein alleged, and have regularly and continuously given and made the aforesaid rebates, participations and payments.

68. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that at all times stated in this indictment, Ford Motor Company, Universal Credit Corporation, Commercial Investment Trust Corporation and others, Chrysler Corporation and corporations controlled by it, and Commercial Credit Corporation and others, have been engaged in conspiracies in restraint of

interstate trade and commerce in so-called Ford, Chrysler, Dodge, DeSoto and Plymouth automobiles similar to the conspiracy described in this indictment.

69. During the three years next preceding the finding and presentation of this indictment, General Motors Corporation, Ford Motor Company, and Chrysler Corporation and corporations controlled by it, have together produced more than ninety per cent of the supply of automobiles which has been required by the dealers for the continuation of their businesses, and each of said manufacturers has conducted its interstate trade and [fol. 196-23] commerce in automobiles substantially in the manner and according to the system described in this indictment.

70. At all times stated in this indictment, the automobile dealers, including the General Motors dealers, have had substantial investments of money, credit, and property in their businesses of purchasing and selling automobiles, as aforesaid; said investments and businesses would have been greatly reduced in value and destroyed by the defendants carrying out the aforesaid intimations, suggestions, threats, cancellations, and statements; and to prevent such destruction, loss and damage of and to their investments and businesses, all or almost all of the dealers, have complied with said intimations, suggestions, threats, and statements.

71. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that the effect of the aforesaid conspiracy, and the acts, practices, and things in this indictment stated, has been to burden, obstruct, and unduly restrain the aforesaid interstate trade and commerce in General Motors automobiles.

72. And so the Grand Jurors aforesaid, upon their oath aforesaid, do say that the defendants, and other persons and corporations to the Grand Jurors unknown, throughout the three years next preceding the finding and presentation of this indictment, at the places, and in the manner and form, aforesaid, unlawfully have engaged [fols. 196-24-197] in a conspiracy in restraint of trade and commerce among the several States in General Motors automobiles.

Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

James R. Fleming, United States Attorney. Russell Hardy, Special Assistant to Attorney General.

A true copy: Attest: Margaret Long, Clerk, by Helen Mulrey, Deputy Clerk.

[fol. 198] In United States District Court

[Title omitted].

[File endorsement omitted.]

Notice of Submission of Proposed Findings of Fact, Conclusions of Law and Order—Filed July 5, 1946

To: Clifford B. Longley, Esq., Wallace R. Middleton, Esq., Frederick C. Nash, Esq., 1400 Buhl Building, Detroit, Michigan. Crumpacker, May, Carlisle & Beamer, 811 J. M. S. Building, South Bend, Indiana, Attorneys for Respondent Ford Motor Company.

To: Samuel S. Isseks, Esq., 30 Broad Street, New York, N. Y. Alphonse A. LaPorte, Esq., One Park Avenue, New York, N. Y. Scheer, Scheer & Taylor, 408 Oddfellows Bldg., South Bend, Indiana, Attorneys for Respondents Commercial Investment Trust Corporation, et al.

Please take notice that the proposed order, with findings of fact and conclusions of law, a copy of which is [fol. 199] attached hereto, has been submitted by complainant, United States of America, to the Clerk of the Court for signature by Honorable Patrick T. Stone, United States District Judge.

Dated: July 2, 1946.

—— ——, Holmes Baldridge, Special Assistant to the Attorney General.

[fol. 200] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING COMPLAINANT'S MOTION AND DENYING RESPONDENTS' MOTIONS FOR MODIFICATION OF THE FINAL DECREE AS MODIFIED

This matter came on to be heard by the Court on a motion of the United States for modification of the final decree as modified, and on motion of respondents for modification of the final decree as modified, and the Court having heard argument, and counsel having submitted briefs, and the Court having considered the matter,

Now, therefore, it is ordered, adjudged and decreed as follows:

1. The motion of Ford Motor Company seeking a suspension of sub-paragraphs (i) and (k) of Paragraph 6 of the decree, sub-paragraph (d) of Paragraph 7 of the decree, and such parts of sub-paragraph (e) of Paragraph 6 of the decree as may be necessary to do the things now prohibited by sub-paragraphs (i) and (k) of Paragraph 6, until such time as they shall be imposed [fol. 201] upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court which, although subject to further review, continues effective, be and the same is hereby denied.

2. The motion of Commercial Investment Trust Corporation and others seeking a suspension of sub-paragraphs (i) and (k) of Paragraph 6 of the decree, sub-paragraph (d) of Paragraph 7 of the decree, and such parts of sub-paragraph (e) of Paragraph 6 of the decree as may be necessary to do the things now prohibited by sub-paragraphs (i) and (k) of Paragraph 6, until such time as they shall be imposed upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court which, although subject to further review, continues effective, be and the same is hereby denied.

3. The motion of Ford Motor Company that an order be entered pursuant to Paragraph 12 of the decree, permitting Ford Motor Company to acquire and retain ownership of and control over or interest in any finance company, be and the same is hereby denied.

It is ordered further that the aforesaid final decree as modified shall be and is hereby modified so that the second paragraph of Paragraph 12 thereof shall read as follows:

> It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1947, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner [fol. 202] provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

And it is further ordered, adjudicated, and decreed that except as thus modified, the modified decree as previously entered shall stand in full force and effect.

By the Court:

Dated:——, 1946.

—— ——, Patrick T. Stone, United States District Judge.

[fol. 203] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON COMPLAINANT'S MOTION TO MODIFY THE FINAL DECREE, AS MODIFIED, AND ON RESPONDENTS' MOTIONS TO SUSPEND CERTAIN PROVISIONS OF THE FINAL DECREE.

The Court makes the following findings of fact:

1. That jurisdiction was specifically retained in this Court for the purpose of requiring compliance with the terms of the decree, or for the purpose of modifying the decree upon proper showing.

2. That this Court has jurisdiction to hear and dispose of the subject matter of complainant's motion and of respondents' motions.

3. That certain provisions of Paragraphs 6 and 7 of the decree herein were to be suspended in the event of failure of complainant to secure general verdicts of guilty against General Motors Corporation, General Motors Acceptance Corporation and others in a then pending criminal antitrust proceedings by January 1, 1940.

4. That the Court takes judicial notice of the fact that general verdicts of guilty were obtained against General Motors Corporation, General Motors Acceptance Corporation and others on November 17, 1939, and that such general verdicts were sustained on appeal.

[fol. 204] 5. That the trial court in its instructions to the jury in the criminal antitrust proceedings against General Motors Corporation, et al., held that the agreements, acts, and practices enjoined in Paragraphs 6 (i), 6 (k), and 7 (d) of the Ford decree herein, among others, constituted a proper basis for the return of a general verdict of guilty.

6. That under Paragraph 12 a(2) of the decree herein, the general verdict of guilty in the General Motors case, under the instructions to the jury by the trial court, is equivalent to a decree restraining the performance by General Motors Corporation of such agreement, acts, or practices as are enjoined herein by Paragraphs 6 (i), 6 (k), and 7 (d), and other paragraphs of the decree.

7. That the prohibitions contained in Paragraphs 6 (i), 6 (k), and 7 (d) of the decree herein have been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of the general verdict of guilty against them under proper instructions from the trial court in accordance with the provisions of Paragraph 12 a(2) of the decree herein.

8. That respondents are not laboring under any competitive disadvantage with General Motors Corporation and General Motors Acceptance Corporation in the manufacture, sale, and financing of Ford cars by virtue of the prohibitions contained in Paragraphs 6 (i), 6 (k), and 7 (d) of the decree herein, and offered no evidence showing competitive disadvantage.

9. That the decree provided for a termination of the bar against affiliation, if the civil proceedings against General Motors Corporation and General Motors Accept-
[fol. 205] ance Corporation were not successfully concluded by a court of last resort by January 1, 1941.

10. That by agreement among the parties the date for termination of the bar against affiliation has been extended from time to time to January 1, 1946.

11. That the provisions of Paragraph 12 of the decree relating to the bar against affiliation, were framed upon the basis that the ultimate rights of the parties thereunder should be determined by the Government's civil antitrust suit against General Motors Corporation and General Motors Acceptance Corporation.

12. That time was not of the essence with respect to lapse of the bar against affiliation.

13. That complainant has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation.

14. That further extension of the bar against affiliation will not impose a serious burden upon respondent, Ford Motor Company, and will not place respondent, Ford Motor Company, at a competitive disadvantage as regards General Motors Corporation.

15. That respondent, Ford Motor Company, has offered

no proof that further extension of the bar against affiliation will place it at a competitive disadvantage with General Motors Corporation.

The Court rules as a matter of law:

1. That the Court has jurisdiction to entertain the several motions and to make a proper order, or orders, pursuant thereto.

[fols. 206-207] 2. That under Paragraph 12 a(2) of the decree, general verdicts of guilty against General Motors Corporation and others in the criminal antitrust proceedings, under proper instructions from the trial court, must be considered the equivalent of a decree against General Motors Corporation restraining the performance by General Motors Corporation of any agreements, acts, or practice which the trial court, in its instructions to the jury, held was a violation of the Sherman Act.

3. That under Paragraph 12 a(3) of the decree herein, the restraints imposed by sub-paragraphs (d) to (f) and (h) to (l), inclusive, of Paragraph 6, and sub-paragraphs (a), (c), and (d) of Paragraph 7, are not subject to suspension provided the equivalent of a decree, as set out in Paragraph 12 a(2), is secured against General Motors Corporation.

4. That the purpose and intent of Paragraph 12 was to provide that the test of the permanency of the bar against affiliation was to abide the outcome of the civil antitrust suit against General Motors Corporation, and that the time clause was subsidiary to such main purpose.

5. That the purpose and intent of the decree will be carried out if Ford Motor Company is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Ford Motor Company from being placed at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.

Dated this——day of——1946.

——, Patrick T. Stone, United States District Judge.

[fols. 208-209] In United States District Court

Findings of Fact, Conclusions of Law, and Order—July 25, 1946

The United States has moved that this Court extend the period provided in paragraph 12 of the consent decree entered in this cause on November 15, 1938 beyond January 1, 1946, the date to which it was previously extended by consent of the parties, and respondent Ford Motor Company has opposed this motion and in turn moved that this Court enter an order pursuant to paragraph 12 that nothing in said consent decree shall preclude said respondent from acquiring and retaining ownership of, control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12 a thereof. In addition, respondent Ford Motor Company has moved pursuant to paragraph 12 a of said decree that the provisions of subparagraphs (i) and (k) of paragraph 6 of said decree be suspended until similar provisions are imposed upon General Motors Corporation and that subparagraph (e) of said paragraph 6 be modified to the extent necessary to permit said respondent to do those things prohibited by said subparagraphs (i) and (k) which might also be prohibited by said subparagraph (e) such modification to continue until provisions similar to said subparagraph (e) without such modification are imposed on General Motors Corporation. Also, all respondent finance companies have moved for suspension of subparagraph (d) of paragraph 7 of said decree until a similar provision is imposed upon General Motors Acceptance Corporation.

All of said motions have been heard upon affidavits and arguments of counsel in open court, the complainant appearing by Wendell Berge, Esq. Assistant Attorney General, Holmes Baldridge, Esq. Special Assistant to the Attorney General, Alexander M. Campbell, Esq. United [fols. 210-211] States Attorney for the Northern District of Indiana, the respondent Ford Motor Company appearing by Clifford B. Longley, Esq. Wallace R. Middleton, Esq., Frederick C. Nash, Esq., and Messrs. Crumpacker, May, Carlisle & Beamer, and the respondents, Commer-

cial Investment Trust Corporation, et al, appearing by Samuel S. Isseks, Esq., Alphonse A. La Porte, Esq. and Messrs. Scheer, Scheer and Taylor, and Russell Hardy, Esq. having, with the permission of the Court, filed a brief amicus curiae, and the Court, having considered the proofs, the arguments of counsel, and the briefs filed, and being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law;

Findings of Fact

1. That the purpose of the second unnumbered paragraph of paragraph 12 of said decree was not only to protect respondent, Ford Motor Company, from the competitive disadvantage that might result from the continued ownership of General Motors Acceptance Corporation by General Motors Corporation if the civil suit of The United States against General Motors Corporation to require it to divest itself of General Motors Acceptance Corporation was delayed, but also to give respondent, Ford Motor Company, an opportunity to defend itself on the question of affiliation, after the time limit set forth in such paragraph had expired.

2. That the suit instituted by the United States against General Motors Corporation to require that corporation to divest itself of ownership of General Motors Acceptance Corporation is still pending in the United States District Court at Chicago, Illinois, and has not been reached for trial. However, the plaintiff has proceeded diligently and expeditiously in its said suit.

3. That jurisdiction of this action was specifically retained in this Court for the purpose of requiring compliance with the terms of the decree, or for the purpose of modifying the decree upon proper showing.

4. That this Court has jurisdiction to hear and dispose of the subject matter of complainant's motion and of respondents' motions.

[fols. 212-213] 5. That certain provisions of Paragraph 6 and 7 of the decree herein were to be suspended in the event of failure of complainant to secure general verdicts of guilty against General Motors Corporation, General Motors Acceptance Corporation and others in a then pending criminal antitrust proceeding by January 1, 1940.

6. That the Court takes judicial notice of the fact that general verdicts of guilty were obtained against General Motors Corporation, General Motors Acceptance Corporation and others on November 17, 1939, and that such general verdicts were sustained on appeal.

7. That the trial court in its instructions to the Jury in the criminal antitrust proceedings against General Motors Corporation, et al., held that the agreements, acts, and practices enjoined in Paragraphs 6 (i), 6 (k) and 7 (d) of the Ford decree herein, among others, constituted a proper basis for the return of a general verdict of guilty.

8. That under Paragraph 12 a (2) of the decree herein, the general verdict of guilty in the General Motors case, under the instructions to the jury by the trial court, is equivalent to a decree restraining the performance by General Motors Corporation of such agreement, acts, or practices as are enjoined herein by paragraphs 6 (i) 6 (k) and 7 (d) and other paragraphs of the decree.

9. That the prohibitions contained in Paragraphs 6 (i) 6 (k) and 7 (d) of the decree herein have been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of the general verdict of guilty against them under proper instructions from the trial court in accordance with the provisions of Paragraph 12a(2) of the decree herein.

10. That respondents are not laboring under any competitive disadvantage with General Motors Corporation and General Motors Acceptance Corporation in the manufacture, sale, and financing of Ford cars by virtue of the prohibitions contained in Paragraphs 6(i) 6 (k) and 7 (d) of the decree herein, and offered no evidence showing competitive disadvantage.

[fols. 214-215] 11. That the decree provided for a termination of the bar against affiliation, if the civil proceedings against General Motors Corporation and General Motors Acceptance Corporation were not successfully concluded by a court of last resort by January 1, 1941.

12. That by agreement among the parties the date for

termination of the bar against affiliation has been extended from time to time to January 1, 1946.

13. That the provisions of paragraph 12 of the decree, relating to the bar against affiliation, were framed upon the basis that the ultimate rights of the parties thereunder should be detetermined by the Government's civil antitrust suit against General Motors Corporation and General Motors Acceptance Corporation.

14. That time was not of the essence with respect to lapse of the bar against affiliation.

15. That respondent, Ford Motor Company, has offered no proof that further extension of the bar against affiliation will place it at a competitive disadvantage with General Motors Corporation.

16. That further extension of the bar against affiliation until January 1, 1947, will not impose a serious burden upon respondent, Ford Motor Company, and will not place respondent, Ford Motor Company, at a competitive disadvantage as regards General Motors Corporation.

Conclusions of Law

1. That the Court has jurisdiction to entertain the several motions and to make a proper order, or orders, pursuant thereto.

2. That under Paragraph 12 a(2) of the decree, general verdicts of guilty against General Motors Corporation and others in the criminal antitrust proceedings, under proper instructions from the trial court, must be considered the equivalent of a decree against General Motors Corporation restraining the performance by General Motors Corporation of any agreements, acts, or practices which the trial court, in its instructions to the jury, held was a violation of the Sherman Act.

3. That under Paragraph 12a(3) of the decree herein, the restraints imposed by subparagraphs (d) to (f) and [fols. 216-217] (h) to (l) inclusive, of Paragraph 6, and subparagraphs (a), (c) and (d) of Paragraph 7, are not subject to suspension provided the equivalent of a decree, as set out in Paragraph 12a(2), is secured against General Motors Corporation.

4. That the purpose and intent of Paragraph 12 was to provide that the test of the permanency of the bar against affiliation was to abide the outcome of the civil antitrust suit against General Motors Corporation, and that the time clause was subsidiary to such main purpose.

5. That the purpose and intent of the decree will be carried out if Ford Motor Company is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Ford Motor Company from being placed at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.

Now, therefore, it is ordered, adjudged and decreed that:

1. The motion of Ford Motor Company seeking a suspension of subparagraphs (i) and (k) of paragraph 6 of the decree, subparagraph (d) of Paragraph 7 of the decree, and such parts of subparagraph (e) of Paragraph 6 of the decree as may be necessary to do the things now prohibited by subparagraphs (i) and (k) of Paragraph 6, until such time as they shall be imposed upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court, which, although subject to further review, continues effective, be and the same is hereby denied.

2. The motion of Commercial Investment Trust Corporation and others seeking a suspension of subparagraphs (i) and (k) of Paragraph 6 of the decree, subparagraph (d) of Paragraph 7 of the decree, and such parts of subparagraph (e) of Paragraph 6 of the decree as may be necessary to do the things now prohibited by subparagraphs (i) and (k) of Paragraph 6, until such time as they shall be imposed upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not [fols. 218-220] subject to further review, or by decree of such court which, although subject to further review, continues effective, be and the same is hereby denied.

3. The motion of Ford Motor Company that an order be entered pursuant to Paragraph 12 of the decree, permitting Ford Motor Company to acquire and retain ownership of and control over or interest in any finance company, be and the same is hereby denied.

It is ordered further that the aforesaid final decree as modified shall be and is hereby modified so that the second paragraph of Paragraph 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1947, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein, to make the application and to obtain such order or decree is expressly conceded and granted.

And it is further ordered, adjudged and decreed that except as thus modified, the modified decree as previously entered shall stand in full force and effect. Dated this 25th day of July, 1946.

Patrick T. Stone, United States District Judge.

[fol. 221] In United States District Court

[Title omitted]

Petition for Appeal—Filed September 17, 1946

To the Honorable Patrick T. Stone, District Judge:

Your petitioner, Ford Motor Company respectfully shows:

1. Petitioner is one of the respondents in the above entitled cause.

2. On the 25th day of July, 1946 an order was entered in the above entitled cause

(1) Which denied the motion of your petitioner seeking a suspension of subparagraphs (i) and (k) of paragraph 6 of the consent decree entered in this cause on November 15, 1938 and a suspension of subparagraph (d) of paragraph 7 of said decree, and of such parts of subparagraph (e) of paragraph 6 of said decree as should be suspended to permit your petitioner to do those things prohibited by said subparagraphs (i) and (k) which might also be prohibited by said subparagraph (e), until such time as [fol. 222] the provisions so suspended shall be imposed upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court which, although subject to further review, continues effective;

(2) Which denied the motion of your petitioner that an order be entered pursuant to paragraph 12 of said consent decree permitting Ford Motor Company to acquire and retain ownership of and control over or interest in any finance company;

(3) Which modified said consent decree so that the second paragraph of paragraph 12 thereof reads as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1947, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or con-

trol over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

3. A direct review of such order by the Supreme Court of the United States may be had pursuant to Section 345 of Title 28 of United States Code which provides, so far as is material here, that

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections or parts of sections and not otherwise: (1) Section 29 of Title 15," • • •

Said Section 29 of Title 15 of United States Code provides, so far as is material here, that

> [fol. 222 "A"] "In every suit in equity brought in any district court of the United States under Sections 1-7 of this Title, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof:" • • •

The above entitled cause is a suit in equity brought in a District Court of the United States under Sections 1-7 of said Title, wherein the United States is complainant and the above described order is a final judgment or decree within the meaning of such statute.

4. Your petitioner deems itself aggrieved by such order for the reasons specified in the assignment of errors which is filed herewith.

Wherefore your petitioner prays that it may be permitted to take an appeal from said order to the Supreme Court of the United States, that the amount of security

for costs on such appeal be fixed, that a citation issue and that a transcript of the record proceedings and papers on which said order was based be made and duly authenticated and sent to the Supreme Court.

Dated September 17th, 1946.

(sgd.) Clifford B. Longley, Clifford B. Longley
(sgd.) Wallace R. Middleton, Wallace R. Middleton, Attorneys for Respondent, Ford Motor Company.

S.J. Crumpacker.

Received copy of the above statement this 19th day of September, 1946. Alexander M. Campbell, United States Attorney, by James E. Keating, Deputy.

[fol. 223] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 17, 1946

Now comes Ford Motor Company, Respondent in the above entitled cause, and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for in said cause from the order of this court entered on the 25th day of July, 1946 denying the motion of this respondent for relief from parts of the consent decree entered herein on the 15th day of November, 1938 and amending paragraph 12 of said consent decree:

1. The court erred in finding (Finding of Fact No. 7) that the trial court in its instructions to the jury in the criminal anti-trust proceedings against General Motors Corporation, et al., held that the agreements, acts and practices enjoined in paragraphs 6(i) and 7(d) of the decree in this cause (i.e. the arrangement by respondent with any finance company, or by any respondent finance company with this respondent, for a visit to a dealer or prospective dealer for the purpose of influencing him to patronize such finance company) constituted a proper basis for the return of a general verdict of guilty in those proceedings, as such finding was not supported by the evidence, and, because of such error, also erred in finding [fol. 224] (Finding of Fact No. 8) that such general verdict of guilty was the equivalent of a decree restrain-

ing the performance by General Motors Corporation and General Motors Acceptance Corporation of such agreements, acts and practices, and in finding (Finding of Fact No. 9) that the prohibitions imposed on this respondent by said paragraphs 6(i) and 7(d) had been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of such general verdict, and in denying this respondent's motion for a suspension of the restraints contained in said paragraphs and for a suspension of such portion of paragraph 6(e) of the decree as restrains the performance by this respondent of the acts, practices and agreements also restrained by said paragraphs 6(i) and 7(d).

2. The court erred in finding (Finding of Fact No. 7) that the trial court in its instructions to the jury in the criminal anti-trust proceedings against General Motors Corporation, et al., held that the agreements, acts and practices enjoined in paragraph 6(k) of the decree in this cause (i.e. the recommending, endorsing and advertising of any finance company to respondent's dealers or to the public) constituted a proper basis for the return of a general verdict of guilty in those proceedings, as such finding was not supported by the evidence, and, because of such error, also erred in finding (Finding of Fact No. 8) that such general verdict of guilty was the equivalent of a decree restraining the performance by General Motors Corporation of such agreements, acts and practices, and in finding (Finding of Fact No. 9) that the prohibitions imposed on this respondent by paragraph 6(k) had been imposed in substantially identical terms upon General Motors Corporation as a result of such general verdict, and in denying this respondent's motion for a suspension of the restraints contained in such paragraph and for a suspension of such portion of paragraph 6(e) of the decree as restrains the performance by this respondent of the acts, practices and agreements restrained by said paragraph 6(k).

[fol. 225] 3. The court erred in finding (Finding of Fact No. 10) that this respondent is not laboring under any competitive disadvantage with General Motors Corporation in the manufacture, sale and financing of Ford cars by virtue of the prohibitions contained in paragraphs

6(i), 6(k) and 7(d) of the decree herein, and offered no evidence showing competitive disadvantage, as such finding was not supported by the evidence.

4. The court erred in amending paragraph 12 of the decree in this cause by substituting the date January 1, 1947 therein in lieu of the date January 1, 1946 and in denying the motion of this respondent for the entry of an order to the effect that nothing in said decree shall preclude this respondent from acquiring and retaining ownership of and/or control over or interest in any finance company or from dealing with such finance company and with the dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a thereof.

5. The court erred in finding (Finding of Fact No. 13) that the provisions of paragraph 12 of the decree, relating to the bar against affiliation, were framed upon the basis that the ultimate rights of the parties thereunder should be determined by the Government's civil anti-trust suit against General Motors Corporation and General Motors Acceptance Corporation, as such finding was not supported by the evidence.

6. The court erred in finding (Finding of Fact No. 14) that time was not of the essence with respect to lapse of the bar against affiliation as such finding was not supported by the evidence.

7. The court erred in concluding (Conclusion of Law No. 4) that the purpose and intent of paragraph 12 was to provide that the test of the permanency of the bar against affiliation was to abide the outcome of the civil anti-trust suit against General Motors Corporation, and that the time clause was subsidiary to such main purpose.

[fol. 226] 8. The court erred in finding (Finding of Fact No. 2) that the Government has proceeded diligently and expeditiously in its said civil anti-trust suit against General Motors Corporation, as such finding is not supported by the evidence.

9. The court erred in finding (Findings of Fact Nos. 15 and 16) that this respondent offered no proof that further extension of the bar against affiliation will place it at a competitive disadvantage with General Motors Corporation and that further extension of the bar against

affiliation until January 1, 1947 will not impose a serious burden upon this respondent and will not place this respondent at a competitive disadvantage as regards General Motors Corporation, as these findings are not supported by the evidence.

10. The court erred in concluding (Conclusion of Law No. 5) that the purpose and intent of the decree will be carried out if this respondent is given the opportunity at any future time to propose a plan for the acquisition of a finance company and to make a showing that such plan is necessary to prevent this respondent from being placed at a competitive disadvantage during the pendency of the Government's civil litigation against General Motors Corporation, et al.

Wherefore, this respondent prays that the said order may be reversed and that an order be entered herein as follows: (a) granting the motion of this respondent for the suspension of paragraphs 6(i), 6(k) and 7(d) of said decree and of part of paragraph 6(e) of said decree; (b) denying the motion of the Government for substitution of the date January 1, 1947 in lieu of the date January 1, 1946 in paragraph 12 of said decree; (c) granting the motion of this respondent for the entry of an order pursuant to paragraph 12 of the decree that nothing therein shall preclude said respondent from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such [fols. 227-237] finance company and with said respondent's dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a thereof; and (d) granting such other and further relief as to the court may seem just and proper.

Dated September 17th, 1946.

(sgd.) Clifford B. Longley, Clifford B. Longley.
(sgd.) Wallace R. Middleton, Wallace R. Middleton, Attorneys for Respondent, Ford Motor Company.

Received copy of the above statement this 19th day of September, 1946.

Alexander M. Campbell, United States District Attorney, by James E. Keating, Deputy.

[fols. 238-240] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Civil Action No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL CREDIT CORPORATION, UNIVERSAL CREDIT COMPANY OF DELAWARE, UNIVERSAL CREDIT COMPANY OF INDIANA, and UNIVERSAL CREDIT COMPANY, INC., Respondents.

ORDER ALLOWING APPEAL—Filed September 19, 1946

It Is Ordered that the petition of Ford Motor Company, a respondent in the above entitled cause, for an appeal to the Supreme Court of the United States from the order entered in this cause on the 25th day of July, 1946 denying its motion for relief from certain provisions of the consent decree herein and modifying paragraph 12 of said decree be and the same hereby is allowed; and it is further ordered that a certified transcript of the record proceedings and papers be forthwith transmitted to the Supreme Court of the United States under the rules of the Supreme Court in such cases made and provided, and that a citation issue returnable forty days from the date hereof; and it is further ordered that security for costs on appeal be fixed in the sum of $500.00.

Dated September 18, 1946.

Patrick T. Stone (sgd) District Judge.

Received copy of the above statement this 19th day of September, 1946.

Alexander M. Campbell, United States District Attorney by James E. Keating, Deputy.

[fols. 241-245] Bond on appeal for $500.00 approved and filed September 19, 1946 omitted in printing.

[fols. 246-247] Citation in usual form showing service on Alexander M. Campbell, filed September 19, 1946, omitted in printing.

[fol. 248] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE OF FORD MOTOR COMPANY INDICATING PORTIONS OF RECORD TO BE INCORPORATED INTO THE TRANSCRIPT—Filed September 28, 1946

To the Clerk of the Above Court:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause by order of Judge Patrick T. Stone, District Judge, dated September 18, 1946, and to include in such transcript of record the following, to-wit:

(1) The Complaint of the United States of America.

(2) The Answer thereto of this Respondent, Ford Motor Company.

(3) The Consent Decree Entered in this cause on November 15, 1938.

(4) All Stipulations and Orders entered in said cause between the date of said consent decree and January 1, 1946 extending the date provided in paragraph 12 of said consent decree from January 1, 1941 to January 1, 1946.

(5) The Motion of the United States of America for Modification of the Final Decree and of the Final Decree as Modified which motion was filed in this cause on or about December 31, 1945.

[fol. 249] (6) The response of this respondent, Ford Motor Company (Filed on or about May 4, 1946) to the motion of the Government designated in Item 5 above.

(7) The motion of this respondent, Ford Motor Company (Filed on or about May 4, 1946) to suspend and modify provisions of consent decree but not including in the transcript the brief of said respondent which was attached to such motion.

(8) The amendment by respondent Ford Motor Company of said motion to suspend and modify provisions of consent decree (which amendment was filed on or about June 5, 1946) together with the exhibits thereto attached

including the affidavit of J. R. Davis dated May 31, 1946, the affidavit of H. M. Cunningham dated May 24, 1946, the affidavit of W. Earl Westen dated May 29, 1946, the affidavit of Charles K. Warren dated May 29, 1946 and the data and charts attached to and made a part of the latter two affidavits.

(9) Certified copy of the indictment, No. 1039, returned by the Grand Jury on May 27, 1938 against General Motors Corporation, General Motors Acceptance Corporation, et al.

(10) Certified copy of the instructions of the trial court in the criminal proceeding instituted in the District Court of the United States for the Northern District of Indiana by the return of the indictment designated in Item 9 above.

(11) Transcript of that portion of the minutes of the proceedings before the District Court in this cause on June 10, 1946 which is hereto attached and which constitutes a portion of the argument of Mr. Baldridge on behalf of the United States.

(12) The proposed order and findings filed by this respondent, Ford Motor Company.

(13) The proposed findings of fact and conclusions of law filed by the United States on complainant's motion to modify the final decree, as modified, and on respondents' motions to suspend certain provisions of the final decree.

(14) The findings of fact, conclusions of law and order signed by Honorable Patrick T. Stone, United States District Judge on the 25th day of July, 1946 and entered in this cause on the same day.

(15) The petition for appeal by this respondent, Ford Motor Company, filed herein on September 17, 1946.

(16) The assignment of errors by this respondent, Ford Motor Company, filed herein on September 17, 1946.

(17) The statement of basis on which appellant contends the Supreme Court of the United States has jurisdiction to review on appeal the order appealed from, as required by Supreme Court Rule 12, filed by this re-

spondent as appellant and presented to Judge Stone with said petition for appeal and assignment of errors.

(18) The order allowing the appeal of this respondent, Ford Motor Company, to the Supreme Court of the United States signed by Honorable Patrick T. Stone, District Judge on September 18, 1946.

[fol. 250] (19) Cost bond in the sum of $500.00 in connection with the appeal of this respondent, Ford Motor Company.

(20) Statement directing attention of appellee to the provisions of paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States, filed by this respondent as appellant.

(21) Citation signed by Honorable Patrick T. Stone on September 18, 1946 directed to the United States of America as appellee.

(22) Proof of service of each of the documents designated in Items (15) through (21) inclusive above upon the District Attorney for the Northern District of Indiana.

(23) Acknowledgment of service of the documents designated in Items (15) through (21) inclusive above by Wendell Berge for the United States of America.

(24) Proof of service by registered mail of the documents designated in Items (15) through (21) inclusive above on the Attorney General of the United States.

(25) This praecipe designating portions of the record to be included in the transcript.

(26) Proof of service of this praecipe on the United States of America, and such other matters as, under the rules of the Supreme Court of the United States, you may be required to certify.

(sgd) Clifford B. Longley, Clifford B. Longley
(sgd) Wallace R. Middleton, Wallace R. Middleton, Attorneys for Respondent, Ford Motor Company.

[fol. 251] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Civil Action No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL CREDIT CORPORATION, UNIVERSAL CREDIT COMPANY OF DELAWARE, UNIVERSAL CREDIT COMPANY OF INDIANA, and UNIVERSAL CREDIT COMPANY, INC., Respondents.

TRANSCRIPT OF THAT PORTION OF THE MINUTES OF THE PROCEEDINGS, HELD AT HAMMOND, INDIANA, ON MONDAY, JUNE 10, 1946 BEFORE HONORABLE PATRICK T. STONE, DISTRICT JUDGE, CONTAINING PARTS OF THE ARGUMENT OF MR. BALDRIDGE ON BEHALF OF THE UNITED STATES.

The following portions of the argument of Mr. Baldridge and the comments of the court in connection therewith are taken from pages 108, 109, 111-145 inclusive, 116-118 inclusive, 120 and 121, of the entire transcript:

(From page 108 of the Transcript) Mr. Baldridge: If the Court please: There has been considerable confusion in the argument thus far with respect to the commitments and obligations undertaken by the federal government when the decrees against Ford and Chrysler were entered on November 15, 1938. Hence, at the risk of being a bit repetitious I should like to explain briefly (p. 109) the background of this litigation and the obligations incurred by the Government as to the three cases.

The three large units in the automobile industry, Ford, Chrysler and General Motors, manufacturing together at that time approximately ninety percent of all the new automobiles manufactured and sold in the United States, [fol. 252] were charged in three separate indictments with conspiring with then affiliated automobile finance companies—the charge was a conspiracy—to monopolize the financing of the sale of cars by coercing dealers of the manufacturer to use the financing facilities of the favored or affiliated factory finance company.

* * * * * * *

(From page 111 of the Transcript) Now, the purpose of these three lawsuits was two-fold. One, to free the dealer from the restrictive controls imposed upon him by the joint operations of the manufacturer and the affiliated finance company and to make him a true, (p. 112) independent contractor, as his franchise contract with the factory showed that he was. The second purpose was to introduce competition in the finance market in General Motors, Ford and Chrysler cars.

It was the pursuit of these two ends that was responsible for the two decrees entered against Ford and Chrysler. At the time these decrees were entered the indictments against those two concerns were dismissed. No satisfactory arrangements were made with General Motors and General Motors elected to stand trial. The decrees were generally, as far as the factories were concerned, the decrees contained two general prohibitions One, the factory could not coerce the dealer or give to any finance company benefits or privileges that were not made available to all finance companies desiring such privileges. That is the gist of paragraph 6. The second was paragraph 12, which prohibited the factory from owning an interest in or in any way subsidizing a finance company.

Now, inasmuch as General Motors elected to stand trial, these two provisions, the provisions in paragraph 6 and those in paragraph 12, were to become presently effective, but their ultimate binding effect was dependent upon the outcome of the two suits against General Motors.

[fol. 253] There has been considerable confusion here today as to what the results have been to date in the two General (p. 113) Motors suits as to which of the clauses, paragraph 6 and 12 of the decree, are controlled by the civil suit for divestiture now pending in Chicago and which are controlled by the criminal case tried at South Bend in the fall of 1939.

To illustrate this confusion, Mr. Isseks says that the criminal case which we had to complete by January 1st, 1940, in order to make the provisions of paragraph 6 effective, that that condition was not met by the Government. I call your Honor's attention to the fact that judgment on conviction was entered in the General Motors case on November 17, 1939.

Now, with respect to the type of relief necessary for

the Government to secure in order to make the provisions of paragraph 6 of the Ford decree effective, paragraph 12a provided that the injunctive features of paragraph 6 were to be suspended after January 1st, 1940, unless the Government secured a general verdict of guilty against the then pending criminal suit against General Motors. This must be followed by a judgment and the judgment would be deemed a determination that any act, agreement or practice of General Motors which the trial court in instructions to the jury held to be a proper basis for a general verdict of guilty, would act or substitute for a decree enjoining such practices against General Motors.

Now, I submit, your Honor, that that commitment on (p. 114) the part of the Government, if commitment we must call it, has been fully met. General Motors was convicted on November 17, 1939. The case was appealed to the Circuit Court of Appeals, Seventh Circuit, affirmed on appeal in its entirety, and certiorari denied by the Supreme Court.

The Court: What was Justice Byrnes and Justice Frankfurter talking about in their opinions?

Mr. Baldridge: That, your Honor, has to do with the Chrysler case that arose in this court in 1941.

The Court: Weren't identical consent decrees entered in both cases?

Mr. Baldridge: That is correct, your Honor, but they were talking in that case about the civil suit that is now pending in Chicago, not the criminal suit.

[fol. 254] The Court: I know.

Mr. Baldridge: I haven't yet reached the point in connection with the pending civil suit.

The Court: All right.

Mr. Baldridge: The second condition subsequent was that unless the Government divorced General Motors from its affiliated finance company, General Motors Acceptance Company, by January 1st, 1941, then the bar against affiliation with a finance company was to lapse. That condition has not yet been met by the Government.

Now, I should like to discuss briefly the motions (p. 115) that have been filed by Ford and Commercial Investment Trust with respect to their suggested suspension of the provisions of paragraphs 6 (i), 6 (k), and wherever necessary 6 (e), and 7 (d) of the decree.

* * * * * * *

(From page 116 of the Transcript) Now, as to the practice enjoined in paragraph (k), admittedly there is no injunction now outstanding against General Motors, either by way of the judge's charge to the jury or otherwise, which prohibits General Motors from advertising its affiliated finance company, GMAC. However, we submit that the other sections in paragraph (k), that a manufacturer shall not recommend or endorse the financing services of any particular finance company is effectively enjoined by the judge's instructions to the jury in the General (p. 117) Motors case, and the subsequent conviction thereon which stands under paragraph 12a as a final determination under the consent decree, stand as an effective injunction against the repetition of that type of practice, as the specific language of paragraph (k) in the Ford decree.

We submit, your Honor, that, except for the bar against affiliation, the decree, and particularly paragraph 6 which defendants have sought to modify, became final upon the conviction of General Motors and the sustaining of that conviction on appeal.

[fol. 255] The Court: There was never any civil judgment entered?

Mr. Baldridge: No, your Honor, but paragraph 12a (2) of this decree provides that the conviction of General Motors under certain instructions made by the trial court shall constitute the same thing as a decree.

The Court: What would you do with General Motors right today if they were doing things which you have enjoined them from doing?

Mr. Baldridge: We could reindict them for a second offense or we could file a civil suit for injunction. We would probably reindict because having been convicted once for this type of practice, an injunction would be probably deemed insufficient and we would move again by indictment.

I should like to call your attention to paragraph 12a (2). It says: (p. 118)

> "The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall be considered as the equivalent of a decree restraining the

performance by General Motors Corporation of such agreement, act or practice—"

In other words, the conviction of General Motors under a certain type of charge by the trial court to the jury was to act as the equivalent of a civil decree against General Motors enjoining exactly the same practices that are now enjoined in paragraph 6 of the Ford decree.

* * * * * * *

(From page 120 of the Transcript) Now, the defendants argue that the continuation of the injunction relating to paragraph 6 (i), 6 (k) and 7 (d) places them at a competitive disadvantage. I have already pointed out how General Motors, except for the provision on advertising, is already under prohibitions against repetition of this type of practice, in the sense that paragraph 12a (2) of the decree was to be substituted as an injunction against [fol. 256] General Motors as far as Ford and Chrysler decrees were concerned. Chrysler, of course, is under the same prohibitions as to section 6 as Ford.

The Court: There is nothing on record in any court except the conviction of General Motors?

Mr. Baldridge: Yes, indeed there is, your Honor.

The Court: There is no injunctive relief?

Mr. Baldridge: Oh, no. But paragraph 12a (2) provides (p. 121) that that conviction——

The Court: Is the equivalent——

Mr. Baldridge: Is the equivalent of an injunction. Hence we insist that the Government has fully complied with its bargain, if it must be called that, with respect to the performance and finality of the injunctive provisions contained in paragraph 6 of the decree, some of which the defendants seek suspension of.

[fols. 257-258] In United States District Court

[Title omitted]

Proof of Service

State of Michigan
County of Wayne, ss:

Bernadette LaBelle, being duly sworn, deposes and says that on the 26th day of September, 1946 she served

a true copy of the attached Praecipe of Ford Motor Company Indicating Portions of Record to be Incorporated Into the Transcript upon Alexander N. Campbell, United States Attorney for the Northern District of Indiana and Wendell Berge, Assistant Attorney General by depositing the same in the United States mail in the City of Detroit in sealed envelopes, which envelopes were addressed as follows:

Alexander N. Campbell United States Attorney for the Northern District of Indiana South Bend, Indiana	Wendell Berge Assistant Attorney General Department of Justice Washington, D. C.

upon which envelopes the United States postage was fully prepaid.

(sgd) Bernadette LaBelle

Subscribed and sworn to before me this 27th day of September, A.D., 1946. (sgd) Estelle C. Pylar, Notary Public, Wayne County, Michigan, My commission expires June 21-1949 (Seal).

[fol. 259] In United States District Court

[Title omitted]

Proof of Service

State of Indiana
St. Joseph County, ss:

Shepard J. Crumpacker, Jr., being first duly sworn upon his oath, deposes and says that on the 19th day of September, 1946, he served upon Alexander M. Campbell, United States District Attorney for the Northern District of Indiana, by serving on James E. Keating, Deputy United States District Attorney for the Northern District of Indiana, true copies of the following documents, filed in the above entitled cause:

1. Petition for appeal by Ford Motor Company.

2. Assignment of errors by Ford Motor Company.

3. Statement of basis on which Appellant, Ford Motor Company, contends the Supreme Court has jurisdiction

to review on appeal the order appealed from as required by Supreme Court Rule 12.

4. Order allowing appeal of Ford Motor Company.

5. Citation on appeal of Ford Motor Company.

6. Cost bond in the sum of $500.00.

7. Statement directing attention to the provisions of Paragraph 3 of Rule 12 of the Revised Rules of Supreme Court of the United States by delivering the same in person to said James E. Keating and having him endorse an acknowledgement of service at the foot of each document.

Further affiant saith not.

Shephard J. Crumpacker, Jr.

Subscribed and sworn to before me this 19th day of September, 1946. Melba M. Weis, My commission expires: 9/30/1948. Notary Public, St. Joseph County, Indiana (Seal).

[fol. 260] In United States District Court

[Title omitted]

Proof of Service

Service of a copy of the following papers in the above entitled action is hereby acknowledged this 23rd day of September, 1946:

(1) Petition of Ford Motor Company for appeal to the Supreme Court of the United States from the Final decree of the Northern District of Indiana, South Bend Division, entered July 25, 1946:

(2) Assignment of Errors and Prayer for reversal;

(3) Statement as to Jurisdiction;

(4) Order allowing Appeal;

(5) Citation;

(6) Undertaking for Costs; and

(7) Notice of filing required by Rule 12(2) of the Rules of the Supreme Court.

Wendell Berge, for United States of America;

[fols. 261-262] IN UNITED STATES DISTRICT COURT

[Title omitted]

PROOF OF SERVICE

STATE OF MICHIGAN
County of Wayne, ss:

ELAINE LENNON, being duly sworn, deposes and says that on the 23rd day of September, 1946 she served upon the Attorney General of the United States true copies of the following documents filed in the above entitled cause:

(1) Petition for Appeal by Ford Motor Company.

(2) Assignment of Errors by Ford Motor Company.

(3) Statement of Basis on Which Appellant Contends the Supreme Court of the United States has Jurisdiction to Review on Appeal the Order Appealed from, As Required By Supreme Court Rule 12.

(4) Order Allowing Appeal of Ford Motor Company.

(5) Citation on Appeal of Ford Motor Company.

(6) Cost Bond in the sum of $500.00.

(7) Statement Directing Attention to the Provisions of Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States.

by enclosing the same in a sealed envelope addressed as follows:

Attorney General of the United States
Washington, D. C.

Registered Mail

and by registering the same with and handing the same to a clerk in the United States Post Office, Federal Building, Detroit, Michigan, with postage fully prepaid thereon, all on the 23rd day of September, 1946.

Said envelops bore Registration Number 343562 and the receipt therefor is hereto attached.

Elaine Rita Lennon

Subscribed and sworn to before me this 24th day of September, A.D., 1946, Estelle C. Pyler, Notary Public, Wayne County, Michigan. My Commission expires June 21, 1949.

[fol. 263] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME TO FILE TRANSCRIPT OF RECORD

It appearing to the Court that an appeal is pending in the above entitled cause to the United States Supreme Court, that the forty (40) day period allowed by Rule 10(2) of the Rules of the Supreme Court of the United States, will expire on October 28th, 1946, and for good cause shown to the Court,

It is hereby ordered by the Court, that the time within which the transcript of record in this cause shall be filed with the Clerk of the United States Supreme Court be and the same hereby is extended and enlarged thirty (30) days from and after the 28th day of October, 1946.

Dated this 19th day of October, 1946.

Patrick T. Stone, Judge, United States District Court.

[fol. 264] CLERK'S CERTIFICATE

Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 1-15] **IN THE**
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

No. 8 Civil

UNITED STATES OF AMERICA, Plaintiff,

v.

FORD MOTOR COMPANY, COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVEST TRUST, INC., UNIVERSAL CREDIT CORPORATION, UNIVERSAL CREDIT COMPANY OF DELAWARE, UNIVERSAL CREDIT COMPANY OF INDIANA, and UNIVERSAL CREDIT COMPANY, INC., Defendants,

Be it remembered that heretofore on the 7th day of November, 1938, the above named plaintiff, by the United

States Attorney, James R. Fleming, filed in the office of the Clerk of this Court, a complaint in the above entitled cause, which complaint reads in the words and figures following, to wit:

Complaint omitted. Printed side page 1 ante.

[fol. 16] IN UNITED STATES DISTRICT COURT

ANSWER—Filed November 7, 1938

To the Honorable the Judge of the District Court of the United States for the Northern District of Indiana,

Universal Credit Corporation, Universal Credit Company, a Delaware Corporation, Commercial Investment Trust Corporation, Universal Credit Company, an Indiana Corporation, Universal Credit Company, Inc. and Commercial Investment Trust Incorporated, defendants herein, by Phillip W. Haberman, their attorney, answering the complaint herein, respectfully allege as follows:

I

Defendants admit that Ford Motor Company is engaged in the manufacture and sale of automobiles; that Commercial Investment Trust Incorporated is engaged in the business of financing the sale of automobiles; that defendants Universal Credit Corporation, Universal Credit Company, a Delaware Corporation, Universal Credit Company, an Indiana Corporation, and Universal Credit Company, Inc. are engaged in the business of financing for Ford dealers exclusively; that Commercial Investment Trust Corporation owns 100% of the outstanding capital stock of Commercial Investment Trust Incorporated and more than 70% of the outstanding capital stock of Universal Credit Corporation; that Universal Credit Corporation owns 100% of the outstanding capital stock of Universal Credit Company, a Delaware corporation, Universal Credit Company, an Indiana Corporation, and Universal Credit Company, Inc; that Universal Credit Corporation was organized in 1928 by Ford Motor Company, which, in 1933, sold all of the stock of Universal [fol. 17] Credit Corporation to Commercial Investment Trust Corporation and since such date the latter company has owned as aforesaid more than 70% of the outstanding

capital stock of Universal Credit Corporation. Except as so admitted defendants deny each and every of the allegations contained in Section I. of the complaint.

II

Defendants admit that Ford Motor Company, General Motors Corporation and Chrysler Corporation are the principal manufacturers of motor cars in the United States and are competitors with each other; that certain automobiles manufactured by said manufacturers have been transported and delivered in interstate commerce; that there are many persons, firms and corporations, including these defendants (other than defendant Commercial Investment Trust Corporation) which are engaged in the business of financing the sale of automobiles by manufacturers to dealers and in financing the sale of automobiles by dealers to retail purchasers. Except as so admitted defendants deny each and every of the allegations of Section II of the complaint.

III

Defendants deny each and every of the allegations contained in Section III of the complaint.

IV

Defendants deny each and every of the allegations contained in Section IV of the complaint.

As and for Separate and Additional Defenses Defendants Allege:

V

First additional defense: The Court lacks jurisdiction of the subject matter of the complaint.

VI

Second additional defense: The complaint fails to state a claim against defendants upon which relief can be granted.

[fol. 18] VII

Third additional defense; Defendants Universal Credit Corporation and Commercial Investment Trust Incorporated, and certain of their respective subsidiaries, acquire retail time sales paper from dealers in the automobiles manufactured by Ford Motor Company, and in the case of Commercial Investment Trust Incorporated from dealers of other manufacturers, on various bases, including the following; the majority of such paper is purchased from the dealer on the basis of his agreement to repurchase the automobile covered thereby if repossessed and returned to him under specified terms and conditions; a smaller proportion of such paper is acquired on a basis whereby the dealer is fully liable as endorser or guarantor for the payment of the purchase price by the retail buyer, or is acquired on a basis whereby the dealer has no responsibility or liability, or is in substance pledged by the dealer as security for a loan.

The amount received by dealers in respect of their retail time sales paper so acquired by said defendants is a matter of agreement with the dealer and depends in general upon the basis upon which the paper is acquired by the said defendants; moreover, as between dealers whose paper is acquired on the same basis the amounts received by them may vary depending upon business and competitive conditions.

In general, the dealer whose paper is so acquired receives a portion of the finance charge (meaning thereby the amount by which the total price of an automobile purchased on the instalment plan exceeds the total price of that automobile purchased for cash); the amount, time and conditions of payment of such portion of the finance charge vary as between the different bases and as between dealers whose paper is acquired on the same basis, by reason of business and competitive conditions.

All of the variations and all of the practices referred to in the foregoing paragraphs of this Section VII are matters of universal competition between the said defendants and a large number of banks and other persons, firms and corporations (exceeding 500 in number) who are also engaged in the business of acquiring such paper from said dealers [fol. 19] on one or more of said bases, and said bases, the

amounts received by the dealers for their paper and the amounts and times and conditions of payment of the portion of the finance charge to dealers in respect thereof are matters of free and open competition, and are arrived at and maintained without consultation or agreement between defendants and defendant Ford Motor Company, and without any other participation by Ford Motor Company.

Regardless of whether or not any of the other matters alleged in the complaint involves interstate commerce or Section I of the Act of Congress of July 1, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", 26 Stat. 209, commonly known as the Sherman Anti-Trust Act, the acts and practices of the defendants set forth in the foregoing paragraphs of this Section and the alleged acts and practices of the defendants referred to in paragraph 18 of Section III of the complaint, considered alone or in combination with any other acts and practices established before the Court, are not commerce or a part of interstate commerce, do not involve interstate commerce, do not involve any restraint of trade or commerce contrary to the Sherman Anti-Trust Act, and this Court does not have jurisdiction thereof.

If, which the defendants deny, their acts and practices referred to in the foregoing paragraphs of this Section VII are within the jurisdiction of this Court or involve any restraint of trade or commerce contrary to the Sherman Anti-Trust Act, either alone or in combination with any other acts and practices established before this Court, no relief is required to be granted to the complainant herein with respect to any of said acts and practices in order that defendants may thereafter conduct their business in accordance with the Sherman Anti-Trust Act in respect of said acts and practices described herein or the alleged Acts and practices of the defendants referred to in paragraph 18 of Section III of the complaint which may be established before the Court, and no relief should be granted to the complainant herein with respect thereto.

[fol. 20] For a long period of time prior to the filing of the Complaint herein, each of the defendants named in the Complaint has voluntarily refrained from exercising many of its legal rights (which are the subject of, but are inaccurately described in, Section III of the complaint) so that the entire competitive situation in the industry has

changed and so that if any relief should have been granted based upon conditions prior thereto, no relief should now be granted.

Any relief granted to the complainant in respect of the acts and practices of the defendants referred to in this section VII of the Answer or referred to in paragraph 18 of Section III of the Complaint would create great competitive disadvantages to the defendants and great competitive advantages to competitors of the defendants unless such competitors were subjected to similar restraints, and would unreasonably and unjustly restrain competition between the defendants and said competitors, so that if any relief is granted to complainant, it should be such relief as will not place the defendants at a competitive disadvantage with their several competitors.

Phillip W. Haberman, Attorney for Defendants, Address: One Park Avenue, New York, N. Y.

Harold F. Birnbaum, Of counsel. Address: One Park Avenue, New York, N. Y.

[fols. 21-46] Final decree of Nov. 15, 1938 omitted. Printed side page, 23 ante.

[fol. 47] Order of appointment omitted. Printed side page, 89 ante.

[fols. 48-49] In United States District Court

Notice of Motion—Filed May 4, 1946

Sirs:

Please Take Notice, that on the motion filed herewith on behalf of Respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc. and made pursuant to paragraph 12a of the consent decree dated November 15, 1938, to suspend subparagraphs (i) and (k) of paragraph 6 and subparagraph (d) of Paragraph 7, and to modify subparagraph (e) of Paragraph 6, and on the memorandum submitted in support of such motion, such re-

spondents request that an oral hearing be had on the motion at such time and place as is specified by the Court.

Dated May 4, 1946.

Respectfully submitted, Scheer, Scheer & Taylor, 408 Odd Fellows Building, South Bend, Indiana, Samuel S. Isseks, 30 Broad Street, New York City, New York, Alphonse A. La Porte, One Park Avenue, New York City, New York, Attorneys for respondents Commercial Investment Corporation, et al.

Hon. Alexander M. Campbell, United States Attorney for the Northern District of Indiana, South Bend, Indiana. Hon. Wendell Berge, Assistant attorney general, Department of Justice, Washington, D. C.

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO SUSPEND PROVISIONS OF CONSENT DECREE ENTERED NOVEMBER 15, 1938—Filed May 4, 1946

Respondents, Commercial Investment Trust Corporation; Commercial Investment Trust, Inc., a corporation; Universal Credit Corporation; Universal Credit Company of Delaware, a corporation; Universal Credit Company of Indiana, a corporation; and Universal Credit Company, Inc., by their attorneys, Scheer, Scheer and Taylor, Samuel S. Isseks, and Alphonse A. Laporte, move pursuant to subparagraphs (2) and (3) of Paragraph 12a of the consent decree entered on November 15, 1938, between the United States of America and the respondents in the above entitled cause, that the provisions of subparagraphs (i) and (k) of Paragraph 6 of the consent decree entered on November 15, 1938 be suspended until they shall be imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, and that the provisions of subparagraph (d) of Paragraph 7 of such decree be suspended until they shall be imposed in substantially identical terms upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review, or (z) by decree of such court, which, although

subject to further review, continues effective; and that the provisions of subparagraph (e) of Paragraph 6 of [fol. 51] such decree be modified, during the suspension of subparagraphs (i) and (k) of Paragraph 6 and subparagraph (d) of Paragraph 7, to the extent that such subparagraph (e) now enjoins any of the acts prohibited by subparagraphs (i) and (k) of Paragraph 6.

The following are reasons why the relief prayed for should be granted:

1. Paragraph 12a of the consent decree, after referring to a proceeding then pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, provides in part as follows:

"(2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act or practice of General Motors Corporation which is the subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purpose of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) upon

the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1041;

"(3) After the entry of a consent decree against General Motors Corporation, or after the entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter orders:

[fol. 52] (i) suspending each of the restraints and requirements contained in subparagraphs (d) to (f) and (h) to (l), inclusive, of Paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in subparagraphs (a), (c) and (d) of Paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to subparagraphs (j) and (k) of Paragraph 6 of this decree are different from said subparagraphs of this decree, then upon application of the respondents any pro-

vision or provisions of said subparagraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

(ii) suspending each of the restraints and requirements contained in the remaining subparagraphs (a), (b), (c) and (g) of Paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause (i) of clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining subparagraphs, and suspending each of the restraints and requirements contained in subparagraph (b) of Paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said subparagraph (h) of paragraph 7;

(iii) suspending the restraints of subparagraph (d) of Paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of subparagraph (i) of Paragraph 6 of this decree are suspended as to the Manufacturer.

"(4) The right of the respondents or any of them to make any application for suspension of any provision of this decree in accordance with the provisions of this paragraph and to obtain such relief is hereby expressly granted."

2. In 1939, the petitioner herein instituted criminal proceedings against General Motors Corporation, General Motors Sales Corporation, General Motors Acceptance Corporation, General Motors Acceptance Corporation of Indiana, et al., in the Northern District of Indiana. The Government obtained a conviction against General Motors [fol. 53] Corporation and General Motors Acceptance

Corporation, among others, which convictions were subsequently affirmed.

3. A copy of the instructions of the Trial Court to the jury in the General Motors case is attached hereto and made a part hereof and marked Exhibit "A". Such instructions and their interpretation by the Circuit Court of Appeals of the Seventh Circuit, in the case of United States v. General Motors Corporation, 121 Fed. 2d 376, show clearly that the Trial Court in its instructions held that the only agreements, acts, or practices of General Motors Corporation and General Motors Acceptance Corporation which constitute a proper basis for a general verdict of guilty were those which coerced General Motors dealers and retail purchasers to finance their cars with a company with whom they would not have financed their cars had they been free of such coercion. The Trial Court in its instructions stated (pp. 5984 to 5987):

> "It is not unreasonable for the General Motors Company to have a finance company. It is not unreasonable for the General Motors Company to have contracts with its dealers for a year or to have a cancellation clause in them. They have a perfect right to have a finance company and to recommend its use. They have a perfect right to cancel a contract from their dealer as long as they are not performing any unreasonable act.
>
> "They have a right to determine whom they will sell their cars to, and they have a right to determine whom they will not sell their cars to because cars are their product and they are their property and no law compels them to sell them to any man they don't want to sell them to; but that is not the charge in this case. The charge is not that by having difficulty in contracts in itself, these defendants did anything wrong; it is not charged here that to recommend the use of GMAC there is anything wrong; it is not charged here that cancellation for cause is anything wrongful; but the Government's theory in this case is irrespective of these contracts and independent of them and outside of them the conditions have been asserted that they, under the designation of those to the grand jurors unknown, the actions have been such

that the possibility, the ability to cancel, the ability to refuse dealers to force them to use GMAC and that these acts that are complained of were acts that were used to force the dealers to use GMAC, the Government insists that these acts inspired by that motive have been such as to result in cancellations that otherwise would not have occurred; in discriminations that would not otherwise have occurred [fol. 54] in the shipment of cars in interstate commerce and in refusals to renew that would not otherwise have occurred, and in the use of GMAC when it otherwise would not have been used.

"In other words, the Government has no right to complain, and it may not complain of the defendants' rights to limit its sales of cars to persons whom it may select, its right to determine who it shall sell to, its rights to determine upon what terms it will sell, its right to pick its own dealers.

"It can only complain if the defendants do sufficient of those acts charged in the indictment as constitute duress upon the dealer to accomplish a result that would have otherwise not have been accomplished, and to make a dealer do something that he would not have done of his own free will.

"That, almost, is the question in this case—whether the dealer could act as a free man; whether he could act of his own free will.

"The defendants say:

'We never imposed any restrictions upon that freedom of action.'

"The Government says it did and there is that question. If it did—if the defendants did that sort of thing—and if it resulted in an unreasonable restriction and unreasonable restraint of interstate commerce, then you would have a right to find them guilty.

"If they did not do it, this lawsuit is at an end, and that is a question which you have got to decide."

4. Nowhere in the instructions to the jury in the General Motors case, or in the interpretation of such instructions by the Circuit Court of Appeals, is there any language from which it can be concluded that any of the matters enjoined in subparagraphs (i) and (k) of Para-

graph 6 of such decree, and subparagraph (d) of Paragraph 7 of such decree were held by the trial court to constitute a proper basis for the return of the general verdict of guilty. On the contrary, the trial court, in its instructions to the jury in the General Motors case, in substance stated that the matters prohibited in such subparagraphs were proper (p. 5987-5988):

"You know you have heard of the terms: exposition; persuasion; argument; coercion.

"They are different steps. They are graduated steps that I suppose every salesman goes through, except perhaps the last.

"In exposition one may expound the merits of that which he has to sell; he may explain its nature [fol. 55] and by his exposition make a clear picture of what he has.

"By persuasion he may endeavor to persuade the person to whom he is talking to accept that which he has to offer.

"There is little advancement in his further progress, to argue.

"Persuasion means something softer than argument, perhaps, but he may argue with him and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer.

"All of these are proper. He may not go beyond that and use something that is within his power to use as a club to coerce the person to accept that which he has to offer."

And again at p. 6013-6014:

"I think I said to you yesterday that the defendants may expound the alleged advantages of General Motors Acceptance Corporation; they may explain fully the characteristics of its operations, as they claim they exist; they may point out the advantages; they may expound all of those things; they may persuade; they may use persuasion in their conversations, in their communications with their dealers; they may even argue. Those things are all proper. They have a right, as I have said, to determine to whom they shall sell their automobiles and to whom

they shall not. Those things constitute no violation of the law.

"* * * and the charge in this indictment is, that this coercion, this misuse that has proceeded, according to the indictment beyond exposition, persuasion and argument, has resulted in a situation where the commerce in General Motors Corporation, the products of General Motors, from state to state, has been unreasonably restricted and restrained."

5. No consent decree or other decree of a court of competent jurisdiction has ever imposed upon General Motors Corporation or its subsidiaries, either in substantially identical terms or otherwise, any of the restraints and requirements contained in Paragraph 6 of the decree in this cause nor has a decree of either type ever imposed upon General Motors Acceptance Corporation or its subsidiaries, either in substantially identical terms or otherwise, any of the restraints and requirements contained in Paragraph 7 of the decree in this cause.

6. At the time of the entry of the consent decree, representatives of the Department of Justice recognized that the prohibitive provision of the decree with respect to advertising was not an unreasonable restraint of trade in violation of the Anti-trust Law.

(a) Thurman Arnold, then Assistant Attorney General [fol. 56] in charge of the Anti-Trust Division of the Department of Justice, in a press release dated November 7, 1938, approved by Homer Cummings, then Attorney General, stated:

"Such a method of advertising has never been held to be violative of the antitrust laws, and the legality of its use, in the absence of positive fraud, has not been questioned.

"There are no precedents which compel the adoption of such restrictions on advertising."

(b) Holmes Baldridge, Special Assistant to the Attorney General, stated on page 13 of the stenographic minutes, at the time the consent decree was submitted to the Court:

"It is the Department's idea, the one with respect

to advertising, the other with respect to adoption of a Code of Fair Competition, that this public benefit goes far beyond anything that we could hope to accomplish in a litigated case, besides eliminating the discriminatory practices and coercion complained of by the independents in this suit."

Prior thereto, on May 18, 1938, the Department of Justice, in connection with the institution of the automobile finance investigation in South Bend, announced that any voluntary disposition of the cases would be only on the basis of the companies investigated agreeing to provisions which otherwise could not be obtained under existing law.

7. From the entry of the decree up to the early part of 1942, respondents' business in financing Ford cars had diminished substantially. This resulted from the fact that thousands of commercial banks located throughout the country, which previously were not in the field of financing automobiles, had entered into such field of business. Shortly after the United States entered the war in December, 1941, the manufacture of new automobiles ceased and respondents were not engaged in the financing of new automobiles, except to a very limited extent.

In 1941, the Board of Governors of the Federal Reserve System issued Regulation W, which set forth the terms and conditions under which automobiles could be financed at retail. With the lifting of the restrictions on the manufacture of new cars, respondents have found themselves faced with new economic and competitive factors in [fol. 57] connection with the financing of automobiles. The unprecedented volume of liquid funds held by individuals today will reduce the volume of installment financing. Regulation W is still in effect. Also, many more commercial banks are contemplating entering the installment finance field. Several months ago twelve large banks located in twelve key cities in the United States announced a so-called National Sales Finance Plan directed at the financing of retail installment purchases of automobiles and household appliances. These twelve banks are endeavoring to obtain the signature to this Plan of thousands of other banks. The twelve banks

mentioned above have total resources of well over four billion dollars and, with the other banks joining the Plan, will without doubt make great inroads in the field of automobile financing. In addition, the Morris Plan Corporation of America has announced that it will enter the same field. As recently as April 1, 1946, Irving Trust Company of New York, with total resources in excess of one billion dollars, announced that it had entered the installment loan field, including the financing of automobiles.

8. On information and belief, no other manufacturer of automobiles (except Chrysler Corporation), no manufacturer of other products sold on installments, no other finance company (except Commercial Credit Corporation), and no bank in this country engaged in financing installment sales of either automobiles or other products, is subject to prohibitions or injunctive provisions similar to those set forth in subparagraphs (i) and (k) of Paragraph 6 and subparagraph (d) of Paragraph 7 of the consent decree. Thus, the respondents are at a competitive disadvantage as against their competitors, and particularly as against General Motors Corporation and General Motors Acceptance Corporation. Because of this competitive disadvantage, the provisions for modification of Paragraph 12a were included in the consent decree so that the respondents would be relieved from certain prohibited acts if substantially similar injunctive provisions or the equivalent thereof, were not obtained against General Motors and General Motors Acceptance Corpora- [fol. 58] tion. This was specifically stated by the Government prior to and at the time of the entry of the decree, as shown by the following:

(a) Robert H. Jackson, then Assistant Attorney General, in a letter dated November 29, 1937, to Henry H. Hogan, Assistant General Counsel of General Motors Corporation, wrote in part as follows:

> "The decree will also contain provisions designed to protect the defendants from competitive disadvantages which they may experience in the event that the restrictions contained in the decree are not applied to their competitors."

(b) Thurman Arnold, in a letter dated November 5, 1938, to Phillip W. Haberman, Counsel for Respondents, stated in part as follows:

> "I have told you throughout our conferences that the position of the Department of Justice is that no decree under the Sherman Antitrust Act should be such as to place the defendants at a competitive disadvantage in the industry, and that the Government's policy is to enforce the antitrust laws so as to restore and maintain free competition in the industry in which such decrees are entered."

(c) Holmes Baldridge and Thurman Arnold stated at pages 15 and 16 of the stenographic minutes of the hearing before Hon. Thomas W. Slick, United States District Judge for the Northern District of Indiana, at the time the final decree was submitted:

> "Mr. Baldridge . . .
>
> Paragraph 12 states what we might designate as so-called estoppel clause; provided that, neither the Ford nor Chrysler decrees shall continue to be effective in the event of failure to convict General Motors and the General Motors Acceptance in the trial of the Criminal Cause. That provision was put in for this reason, if the Department is unable to stop these alleged discriminations and coercion, against General Motors, it would place Ford and Chrysler, who have agreed to give them up, at a decided distinct disadvantage, so that the effectiveness of this decree is made contingent upon the conviction of the General Motors and the General Motors Acceptance. The decrees will become effective one hundred twenty days after entering, but the effectiveness of both will be discontinued in the event of failure to convict the General Motors and General Motors Acceptance Company."
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> . . . . . .
>
> "The Court: I wonder what possible effect that might have on the prosecution of the other defendants, to say: this shall not be effective unless you convict certain other defendants?
>
> "Mr. Arnold: We had to do that in order to [fol. 59] prevent the General Motors securing a com-

petitive advantage over the other companies. They are highly competitive; they have cars in the same price-class, and, if General Motors can continue with the practices that the Government is opposed to, when the Ford and Chrysler must desist, it places them at a distinct competitive advantage over their competitors."

(d) Thurman Arnold, in a public statement approved by Homer Cummings, said at page 11 of a release of the Department of Justice dated November 7, 1938:

"General Motors has not proposed an acceptable plan for a consent decree, and therefore the case against that group must be vigorously prosecuted. In the meantime the voluntary decrees proposed by Chrysler and Ford will go into effect, if accepted by the Court. However, the failure to General Motors to participate has made it necessary to insert provisions in the decrees insuring the Ford and Chrysler groups that General Motors will not be put on a favored basis in the event that the prosecution against it is unsuccessful. To do otherwise might enable General Motors to enjoy an unwarranted competitive advantage over Ford and Chrysler resulting from the voluntary cooperation of the latter companies with the Government. Obviously, in view of the predominant position in the automobile field occupied by these three companies, the Department cannot restrain two of them only, unless it subsequently succeeds in securing relief against the practices of the third."

Wherefore, the respondents pray for the relief hereinabove requested.

Dated, ——, 1946.

Respectfully submitted, —— ——, Scheer, Scheer & Taylor, 408 Odd Fellows Building, South Bend, Indiana. /s/ Samuel S. Isseks, Samuel S. Isseks, 30 Broad Street, New York, New York. /s/ Alphonse A. Laporte, Alphonse A. Laporte, One Park Avenue, New York, New York, Attorneys for Respondents Commercial Investment Trust Corporation, et al.

[fol. 60] To: Alexander N. Campbell, United States Attorney for the Northern District of Indiana, South Bend, Indiana. Wendell Berge, Assistant Attorney General, Department of Justice, Washington D. C.

[fols. 61-118] Exhibit "A" Omitted. Printed side page 110 ante.

[fol. 119] In United States District Court

[Title omitted]

Affidavit in Support of Motion to Suspend Provisions of Consent Decree Entered November 15, 1938—Filed May 4, 1946

United States of America
Southern District of New York
County of New York, ss.:

Alphonse A. Laporte, being duly sworn, does hereby make oath and deposes as follows:

I am Vice-President and General Counsel of Commercial Investment Trust Corporation, and I have read the attached motion to suspend certain provisions of the consent decree entered November 15, 1938, and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed.

Wherefore, I hereby make oath that the statements set forth therein are true to the best of my knowledge, information and belief. The sources of my information are the documents in the files of Commercial Investment Trust Corporation and facts which I have learned while an officer and general counsel of Commercial Investment Trust Corporation.

/s/ Alphonse A. Laporte

Subscribed and sworn to before me this 27th day of April, 1946. /s/ illiam J. Hegarty William J. Hegarty, 30 Broad St., N. Y., N. Y. Attorney and Counsellor-at-Law. (Seal)

[fols. 120-121] [Title omitted]

Receipt is hereby acknowledged of service of notice requesting oral hearing of petition of Commercial Investment Trust Corporation, Commercial Investment Trust,

Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., filed in the above case; together with 2 copies of said petition and 2 copies of memorandum in support of same.

Dated at South Bend, Indiana, this 4th day of May, 1946.

Alexander M. Campbell, United States Attorney, by James E. Keating, Assistant United States Attorney.

[fol. 122] In United States District Court

[Title omitted]

Notice of Submission—Filed June 22, 1946

Please take notice that the attached proposed findings of fact and conclusions of law on the motion of Respondents, Commercial Investment Trust Corporation, et al., to suspend the provisions of the consent decree entered November 15, 1938, will be submitted to the Clerk of the District Court for signature by Hon. Patrick T. Stone, United States District Judge, on June 22, 1946.

Dated June 22, 1946.

Scheer, Scheer & Taylor, Scheer, Scheer & Taylor, 408 Oddfellows Building, South Bend, Indiana. Samuel S. Isseks, Samuel S. Isseks, 30 Broad Street, New York 4, New York. Alphonse A. Laporte, Alphonse A. Laporte, One Park Avenue, New York, New York. Attorneys for Respondents Commercial Investment Trust Corporation, et al.

To: Hon. Alexander N. Campbell, United States Attorney for the Northern District of Indiana. Hon. Wendell Berge, Assistant Attorney General, Department of Jus-[fol. 123] tice, Washington, D. C. Crumpacker, May, Carlisle & Beamer, 811-812 J. M. S. Building, South Bend, Indiana. Clifford B. Longley, Esq., 1400 Buhl Building, Detroit, Michigan. Wallace R. Middleton, Esq., 1400 Buhl Building, Detroit, Michigan. Attorneys for Respondent Ford Motor Company.

[fol. 124] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTION OF RESPONDENTS, COMMERCIAL INVESTMENT TRUST CORPORATION, ET AL., TO SUSPEND PROVISIONS OF CONSENT DECREE ENTERED NOVEMBER 15, 1938

Findings of Fact

1. The Court has jurisdiction under paragraph 12a(4) and 12a(3)(1) to suspend the provisions of subparagraphs 6(i) and 6(k) until the restraints and requirements contained in such subparagraphs shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries and to suspend the provisions of subparagraph 7(d) until the restraints and requirements contained in such subparagraph shall be imposed, in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by a final decree of a court of competent jurisdiction not subject to further review, or (a) by decree of such court which, although subject to further review, continues effective, unless this Court finds that the Trial Court, in its instructions to the jury in the criminal case against General Motors Corporation which was tried in November, 1939, held that the acts or practices enjoined by such subparagraphs 6(i), 6(k) and 7(d) constituted a proper basis for the return of a general verdict of guilty.

2. No decree, whether by consent or otherwise, has been entered against General Motors Corporation and General Motors Acceptance Corporation, or their subsidiaries.

[fol. 125] 3. From the instructions of the Trial Court in the criminal case against General Motors Corporation, et al., a copy of which is attached to the Respondent Finance Companies' motion for suspension, and a certified copy of which was handed up to the Court on the argument, it does not appear that the Trial Court, in the criminal case against General Motors Corporation, General Motors Acceptance Corporation and others, in its instructions to the jury, held that any of the acts or

practices restrained by subparagraphs 6(i) and 7(d) of the consent decree filed in this cause on November 15, 1938, constituted a proper basis for the return of a general verdict of guilty.

4. From the instructions of the Trial Court in the criminal case against General Motors Corporation, et al., a copy of which is attached to the Respondent Finance Companies' motion for suspension, and a certified copy of which was handed up on the argument, it does not appear that the Trial Court, in the criminal case against General Motors Corporation, General Motors Acceptance Corporation and others, in its instructions to the jury, hold that any of the acts or practices restrained by subparagraph 6(k) of the consent decree filed in this cause on November 15, 1938, constituted a proper basis for the return of a general verdict of guilty.

5. At the time of the entry of the consent decree, and prior thereto, representatives of the Department of Justice advised the Respondents, the Court and the public, that Respondents would be at a competitive disadvantage as against General Motors Corporation and General Motors Acceptance Corporation if Respondents agreed to the consent decree filed herein on November 15, 1938, and similar relief, or the equivalent thereof, was not obtained by the Government against General Motors Corporation and General Motors Acceptance Corporation. The provisions of paragraph 12a of the consent decree were included in the consent decree so that the Respondents would be relieved from certain injunctive provisions if sub- [fol. 126] stantially similar injunctive provisions, or the equivalent thereof, were not obtained against General Motors Corporation and General Motors Acceptance Corporation.

6. No other manufacturer of automobiles (except Chrysler Corporation), no manufacturer of other products sold on installments, no finance company (except Commercial Credit Corporation), and no bank in this country engaged in financing installment sales of either automobiles or other products, is subject to prohibitions or injunctive provisions similar to those set forth in subparagraphs 6(i), 6(k) and 7(d) of the consent decree of November 15, 1938.

7. From the entry of the consent decree on November 15, 1938, to the early part of 1942, Respondent Finance Companies' business in financing Ford cars has diminished substantially.

8. Since the lifting of the restrictions on the manufacture of new cars after the termination of the war, Respondent Finance Companies have found themselves faced with new economic and competitive factors in connection with the financing of automobiles.

Conclusions of Law

I. The Court has jurisdiction to pass on the motion of Respondent Finance Companies to suspend the provisions of subparagraphs 6(i), 6(k) and 7(d) of the consent decree of November 15, 1938, until substantially similar provisions are obtained by the Government in a decree against General Motors Corporation and General Motors Acceptance Corporation, and their subsidiaries.

II. Respondent Finance Companies' motion to have subparagraphs 6(i), 6(k) and 7(d) suspended, and subparagraph 6(e) modified (during the suspension of subparagraphs 6(i), 6(k), and 7(d) and only to the extent that subparagraph 6(e) now enjoins acts or practices prohibited by subparagraphs 6(i) and 6(k)), should be granted until the provisions of subparagraphs 6(i) and 6(k) of the consent decree entered November 15, 1938, in [fol. 127] this cause, shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries and the provisions of subparagraph 7(d) shall be imposed, in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review, or (z) by decree of such Court which, although subject to further review, continues effective.

III. By the terms of paragraph 12(a)(3) of the consent decree of November 15, 1938, it is unnecessary for the Respondent Finance Companies to prove that the continuance of the restraints in subparagraphs 6(i), 6(k) and 7(d) against the Respondents will place Respondent Finance Companies at an economic disadvantage.

IV. If Respondent Finance Companies must show that the continuance of the restraints in subparagraphs 6(i), 6(k) and 7(d) will place Respondent Finance Companies at an economic disadvantage, then Respondent Finance Companies have made such a showing by reason of (a) the undisputed fact that at the time of the entry of the decree and prior thereto, representatives of the Government stated to the Respondents, the Court and the public, that the failure of the Government to obtain substantially similar relief against General Motors Corporation and General Motors Acceptance Corporation would place the Respondents at an economic disadvantage, and (b) the uncontradicted proof set forth in Respondent Finance Companies' moving papers under oath, (1) that subsequent to the entry of the decree and up to the early part of 1942, the Respondents' business in financing Ford cars diminished substantially; (2) that since the manufacture of new cars had been permitted, the Respondents have found themselves faced with new economic and competitive factors in connection with the financing of automobiles; and (3) that no other manufacturer of automobiles (except Chrysler Corporation), no manufacturer of other products sold on installments, no other finance company (except Commercial Credit Corporation), and no bank in [fol. 128] this country engaged in financing installment sales of automobiles, is subject to prohibitions or injunctive provisions similar to those set forth in subparagraphs 6(i), 6(k) and 7(d) of the consent decree of November 15, 1938.

—— ——, U.S.D.J.

Dated, June ——, 1946.

[fol. 129] In United States District Court

[Title omitted]

Notice of Proposed Order—Filed June 22, 1946

Please take notice that the proposed order granting the motion of the Respondents, Commercial Investment Trust Corporation, et al., to suspend subparagraphs 6(i), 6(k) and 7(d) of the consent decree entered November 15, 1938, will be submitted to the Clerk of the Court

for signature by Hon. Patrick T. Stone, United States District Judge, on June 22, 1946.

Dated, June 22, 1946.

Scheer, Scheer & Taylor, Scheer, Scheer & Taylor, 408 Oddfellows Building, South Bend, Indiana. Samuel S. Isseks, Samuel S. Isseks, 30 Broad Street, New York 4, New York. Alphonse A. Laporte, Alphonse A. Laporte, One Park Avenue, New York, New York. Attorneys for Respondents Commercial Investment Trust Corporation, et al.

To: Hon. Alexander N. Campbell, United States Attorney for the Northern District of Indiana. Hon. Wendell Berge, Assistant Attorney General, Department of Jus-[fol. 130] tice, Washington, D. C. Crumpacker, May, Carlisle & Beamer, 811-812 J. M. S. Building, South Bend, Indiana. Clifford B. Longley, Esq., 1400 Buhl Building, Detroit, Michigan. Wallace R. Middleton, Esq., 1400 Buhl Building, Detroit Michigan. Attorneys for Respondent Ford Motor Company.

[fol. 131] In United States District Court

[Title omitted]

Order Granting Motion of Respondents, Commercial Investment Trust Corporation, et al., to Suspend Subparagraphs 6(i), 6(k) and 7(d) of Consent Decree Entered November 15, 1938.

At a session of said Court, held in the Court House in the City of Hammond, State of Indiana, on the —— day of June, A.D., 1946.

Present: Hon. Patrick T. Stone, United States District Judge.

The motion of Respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., for the suspension of subparagraphs 6(i), 6(k) and 7(d) of the consent decree entered November 15, 1938, in this cause, having been

filed on May 4, 1946, in this Court on an application sworn to on April 27, 1946, by the Vice-President and General Counsel of Commercial Investment Trust Corporation, and such motion having come on to be heard and having been argued by counsel for the moving parties and by counsel for United States of America, it is hereby

Ordered, and adjudged, that said motion be, and the same hereby is, granted in all respects; and it is further

Ordered, that each of the provisions of subparagraphs 6(i) and 6(k) of the consent decree entered in this cause on November 15, 1938, be suspended until they shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, [fols. 132-133] and that the provisions of subparagraph 7(d) of such decree be suspended until they shall be imposed, in substantially identical terms, upon General Motors Acceptance Corporation, and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review, or (z) by decree of such Court which, although subject to further review, continues effective; and that each of the provisions of subparagraph 6(e) of such consent decree of November 15, 1938, be modified, during the suspension of subparagraphs 6(i), 6(k) and 7(d), to the extent, and only to the extent, that such subparagraph 6(e) now enjoins any of the acts or practices prohibited by subparagraphs 6(i) and 6(k).

——, U. S. D. J.

Dated, June ——, 1946.

[fols. 134-140] Findings of Fact, Conclusions of Law, and Order Omitted. Printed side page 208 ante.

[fol. 141] In United States District Court

[Title omitted]

Petition for Appeal—Filed September 16, 1946

Now come petitioners, Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of

Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., and considering themselves aggrieved by the Final Decree in Modification made and entered on July 25, 1946, in this Court in the above entitled cause, pray that an appeal be allowed to the Supreme Court of the United States. The particulars wherein said petitioners consider the Final Decree in Modification erroneous are set forth in their Assignment of Errors which is filed herewith.

Wherefore, your petitioners pray that an appeal may be allowed in their behalf to the Supreme Court of the United States for the correction of the errors so com- [fols. 142-143] plained of and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, September 16, 1946.

Scheer, Scheer & Taylor, Scheer, Scheer & Taylor, 408 Oddfellows Building, South Bend, Indiana. Samuel S. Isseks, Samuel S. Isseks, 30 Broad Street, New York, New York. Alphonse A. Laporte, Alphonse A. Laporte, One Park Avenue, New York, New York. Attorneys for Respondents, Commercial Investment Trust Corporation, et al.

Rec'd a copy of the above Sept. 20, 1946.
James E. Keating, Ass't U. S. Atty.

[fol. 144] In United States District Court

[Title omitted]

Assignment of Errors—Filed September 16, 1946

Now come petitioners, Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., the appellants herein, and file the following assignment of errors upon which they will rely in the prosecution of the appeal herewith petitioned

for in said cause to the Supreme Court of the United States from the Final Decree in Modification of this Court entered on the 25th day of July, 1946.

The District Court erred:

1. In not holding that the appellants may exercise the right expressly conceded by the United States under Paragraph 12a of the Consent Decree entered November 15, 1938, which provides that the appellants are entitled to a suspension of Paragraphs 6(i), 6(k) and 7(d) of said Consent Decree, and such parts of Paragraph 6(e) [fol. 145] of said Consent Decree as would be necessary to do the things now prohibited by said Paragraphs 6(i) and 6(k), until such time as the restraints and requirements contained in Paragraphs 6(i) and 6(k) shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and until such time as the restraints and requirements contained in Paragraph 7(d) shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (a) by consent decree, or (b) by final decree of a court of competent jurisdiction not subject to further review, or (c) by a decree of such court which, although subject to further review, continues effective, or (d), by the equivalent of such a decree which is defined by said decree, as a determination of the illegality of such acts or practices by General Motors Corporation, held by the trial court, in its instructions to the jury in the criminal case against General Motors Corporation, to constitute a proper basis for the return of a general verdict of guilty.

2. In not finding that the trial court, in its instructions to the jury in the criminal case against General Motors Corporation, et al which was tried in November, 1939, did not hold that the agreements, acts or practices such as are enjoined by Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered November 15, 1938, constituted a proper basis for the return of a general verdict of guilty.

[fol. 146] 3. In not finding that the trial court in its instructions to the jury in the criminal case against General Motors Corporation et al, which was tried in November, 1939, held that the agreements, acts or practices such

as are enjoined by Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered November 15, 1938, were legal and proper.

4. In not finding that at the time of the entry of the Consent Decree on November 15, 1938, and prior thereto, representatives of the Department of Justice advised the appellants, the Court and the public, that the appellants would be at a competitive disadvantage with General Motors Acceptance Corporation and its subsidiaries if the appellants agreed to said Consent Decree, and similar relief, or the equivalent thereof, was not obtained by the Government against General Motors Acceptance Corporation and its subsidiaries.

5. In not finding that no decree, whether by consent or otherwise, has been entered against General Motors Corporation, or General Motors Acceptance Corporation, and their respective subsidiaries.

6. In not finding that the provisions of Paragraph 12a of the Consent Decree entered on November 15, 1938, were included in said Consent Decree for the purpose of relieving defendant Ford Motor Company from the injunctive provisions of Paragraphs 6(i) and 6(k) of said Consent Decree if substantially similar injunctive provisions, or the equivalent thereof, were not obtained [fol. 147] against General Motors Corporation and its subsidiaries, and for the purpose of relieving the appellants from the injunctive provisions of Paragraph 7(d) of said Consent Decree if substantially similar injunctive provisions, or the equivalent thereof, were not obtained against General Motors Acceptance Corporation, and its subsidiaries.

7. In not finding that no other manufacturer of automobiles (except Chrysler Corporation), no manufacturer of other products sold on installments, no finance company (except Commercial Credit Corporation), no bank in this country engaged in financing installment sales of either automobiles or other products, is subject to prohibitions or injunctive provisions similar to those set forth in Paragraph 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938.

8. In not finding that from the date of the entry of the

Consent Decree on November 15, 1938, to the early part of 1942, the appellants' business in the financing of Ford automobiles had diminished substantially.

9. In not finding that since the lifting of the restrictions on the manufacture of new automobiles after the termination of the war, the appellants have been faced with new economic and competitive factors in connection with the financing of automobiles.

10. In not holding that by the terms of Paragraph 12a(3) of the Consent Decree entered on November 15, 1938, it is unnecessary for the appellants to prove that the continuance of the restraints contained in Paragraphs 6(i), 6(k) and 7(d) will place the appellants at an economic disadvantage.

[fol. 148] 11. In not holding that if the appellants must show that the continuance of the restraints contained in Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938, will place the appellants at an economic disadvantage, then the appellants have made such a showing by reason of the prior statements made by representatives of the Department of Justice to the appellants, the Court and the public with respect to the economic effect of the said continued restraints on the appellants if the United States should fail to obtain similar relief against General Motors Corporation, General Motors Acceptance Corporation and their respective subsidiaries, and by the uncontradicted proof of such effect as set forth in the appellants' moving papers under oath for modification of the said Consent Decree filed on May 4, 1946.

12. In finding that the trial court in its instructions to the jury in the criminal case against General Motors Corporation et al which was tried in November, 1939, held that the agreements, acts or practices such as are enjoined by Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938, constituted a proper basis for the return of a general verdict of guilty.

13. In finding that under Paragraph 12a(2) of the Consent Decree entered on November 15, 1938, the general

[fol. 149] verdict of guilty in the General Motors criminal case, under the instructions to the jury by the trial court, is equivalent to a decree restraining the performance by General Motors Corporation and its subsidiaries of such agreements, acts or practices as are enjoined by Paragraphs 6(i), 6(k) and 7(d) of said Consent Decree.

14. In finding that the prohibitions contained in Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938, have been imposed in substantially identical terms upon General Motors Corporation and its subsidiaries as a result of the general verdict of guilty, under proper instructions from the trial court, in accordance with the provisions of Paragraph 12a(2) of said Consent Decree.

15. In finding that the provisions of Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938, were to be suspended in the event of failure of the United States to secure a general verdict of guilty against General Motors Corporation and its subsidiaries.

16. In finding that the appellants are not laboring under any competitive disadvantage with General Motors Acceptance Corporation in the financing of Ford automobiles by virtue of the prohibitions of Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938.

17. In finding that the appellants offered no evidence in support of their motion for modification filed May 4, 1946, showing competitive disadvantage.

[fol. 150] 18. In finding that the complainant has proceeded diligently and expeditiously in its civil suit against General Motors Corporation, which was begun in October, 1940, to require that corporation to divest itself of ownership of General Motors Acceptance Corporation.

19. In holding that under Paragraph 12a(2) of the Consent Decree entered on November 15, 1938, a general verdict of guilty against General Motors Corporation and its subsidiaries, under proper instructions to the jury by the trial court, must be considered the equivalent of

a decree against General Motors Corporation restraining the performance by General Motors Corporation of any agreements, acts or practices which the trial court, in its instructions to the jury, held was a violation of the Sherman Act.

20. In holding that under Paragraph 12a(3) of the Consent Decree entered on November 15, 1938, the restraints imposed by subparagraphs (d) to (f) and (h) to (l), inclusive, of Paragraph 6, and subparagraphs (a), (c) and (d) of Paragraph 7, are not subject to suspension provided the equivalent of a decree, as set out in Paragraph 12a(2), is secured against General Motors Corporation.

21. In denying the appellants' motion under Paragraph 12a of the Consent Decree, entered November 15, 1938, to suspend the provisions of Paragraphs 6(i), 6(k) and 7(d) and such parts of Paragraph 6(e) as would be [fol. 151] necessary to do the things now prohibited by Paragraphs 6(i) and 6(k), until such time as the restraints and requirements contained in Paragraphs 6(i) and 6(k) shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and until such time as the restraints and requirements contained in Paragraph 7(d) shall be imposed, in substantially identical terms, upon General Motors Acceptance Corporation, and its subsidiaries, either (1) by consent decree, or (2) by final decree of a court of competent jurisdiction not subject to further review, or (3) by decree of such court which, although subject to further review, continues effective.

Prayer for Reversal

For which errors the Respondents, Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., pray that the said decree of the District Court of the United States for the Northern District of Indiana, entered July 25, 1946, in the above entitled cause, be reversed, that the respondents' petition be allowed; that the amount of the cost bond

to be given by appellants be fixed; that citation be issued to the appellee named above; and for such other and further relief to which appellants may be entitled.

Respectfully submitted, Scheer, Scheer & Taylor, Scheer, Scheer & Taylor, 408 Oddfellows Build-
[fols. 152-311] ing, South Bend, Indiana. Samuel S. Isseks, Samuel S. Isseks, 30 Broad Street, New York 4, New York. Alphonse A. Laporte, Alphonse A. Laporte, One Park Avenue, New York, New York. Attorneys for Appellants, Commercial Investment Trust Corporation, et al.

Rec'd a copy of the foregoing Sept. 20, 1946.

James E. Keating, Asst. U. S. Atty.

[fol. 312] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed September 19, 1946

The appellants in the above entitled case and each of them, have prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered in the above entitled cause by the District Court of the United States for the Northern District of Indiana on the twenty-fifth day of July, 1946, and have presented and filed their petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction pursuant to the statutes of the United States and the Rules of the Supreme Court of the United States in such cases made and provided:

It is now ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Northern District of Indiana in the above entitled cause as provided by law, and

[fols. 313-314] It is further ordered that the clerk of the United States District Court for the Northern District of Indiana shall prepare and certify a transcript of the record, assignment of errors and decree in this cause and transmit the same to the Supreme Court of the United

States so that he shall have the same in said Court within forty (40) days of this date, and

It is further ordered that security for costs on appeal be fixed in the sum of Five Hundred ($500.00) Dollars.

Dated, September 18, 1946.

s/ Patrick T. Stone, United States District Judge for the Northern District of Indiana.

Rec'd a copy of the above Sept. 20, 1946.

James E. Keating, Ass't U. S. Atty.

[fol. 315] In United States District Court

[Title omitted]

Praecipe for Transcript of Record—Filed September 19, 1946

To: Clerk, United States District Court for the Northern District of Indiana.

Sir:

You Are Hereby Requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following, and no other, papers, to wit:

1. Complaint, filed herein on November 7, 1938;

2. Answer of respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., to said complaint, together with acknowledgment of service on November 7, 1938;

3. Final Decree herein dated November 15, 1938;

4. Notice of motion by respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of

Indiana and Universal Credit Company, Inc., dated [fol. 316] May 4, 1946;

5. Motion of respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., to suspend provisions of Consent Decree of November 15, 1938 together with copy of instructions of trial court to jury in General Motors criminal case filed therewith entered herein May 4, 1946;

6. Affidavit in support of motion to suspend provisions of Consent Decree of November 15, 1938, entered herein on May 4, 1946;

7. Notice of submission of proposed findings of fact and conclusions of law, and proposed findings of fact and conclusions of law, by respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., entered herein on June 22, 1946;

8. Notice of proposed order, and proposed order, granting motion of respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., to suspend provisions of Consent Decree of November 15, 1938, entered herein on June 22, 1946;

[fol. 317] 9. Complainant's notice of submission of proposed findings of fact, conclusions of law, and order dated July 2, 1946;

10. Findings of Fact, Conclusions of Law, and Order of District Court, dated and entered herein on July 25, 1946;

11. Petition for appeal by respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana

and Universal Credit Company, Inc., filed herein on September 16, 1946;

12. Assignment of errors accompanying said petition for appeal filed herein on September 16, 1946;

13. Statement as to jurisdiction of Supreme Court of the United States accompanying said petition for appeal filed herein on September 16, 1946;

14. Order allowing said appeal and fixing the amount of the bond on appeal filed herein on September 19, 1946;

15. The appeal bond filed herein on September 19, 1946; and approved on September 18, 1946;

16. Citation issued to the United States filed herein on September 19, 1946;

17. Notice of Allowance of Appeal, enclosing the appeal papers herein, and statement directing attention to the provisions of paragraph 3 of Rule No. 12 of the Rules of the Supreme Court of the United States, entered herein on September 18, 1946;

18. Affidavits of service of appeal papers, together with acknowledgment of service thereof, filed herein on September 20, 1946;

19. This praecipe and acknowledgment of service thereof.

[fols. 318-319] Said praecipe to be prepared as required by law and the rules of this court and to be filed in the office of the clerk of the Supreme Court of the United States in accordance with the Rules of the Supreme Court of the United States.

Dated, September 14, 1946.

Scheer, Scheer & Taylor, Scheer, Scheer & Taylor, 408 Oddfellows Building, South Bend, Indiana. Samuel S. Isseks, Samuel S. Isseks, 30 Broad Street, New York 4, New York. Alphonse A. Laporte, Alphonse A. Laporte, One Park Avenue, New York, New York. Attorneys for Appellants.

Service of copies of the foregoing Praecipe is acknowledged, this 20 day of Sept., 1946.

James E. Keating, U. S. Atty., United States of America.

[Fols. 320-329] Bond on appeal for $500.00 approved and filed Sept. 19, 1946 omitted in printing.

[Fols. 330-336 omitted in printing.]

[fols. 337-338] IN UNITED STATES DISTRICT COURT

ACKNOWLEDGEMENT OF SERVICE—Filed September 20, 1946

The Undersigned attorney for the United States of America hereby acknowledges receipt of the following: Original Citation; Original Notice, Copy of Petition for Appeal, Copy of Assignment of Errors, Copy of Statement as Jurisdiction, Copy of order allowing appeal and Copy of Appeal Bond in behalf of the appellants praying for an appeal to the Supreme Court of the United States from a final decree and modification made and entered on July 25th, 1946, in the District Court of the United States for the Northern District of Indiana, South Bend Division.

Dated at South Bend, Indiana, this 20th day of September, 1946.

Alexander M. Campbell, United States Attorney for the Northern District of Indiana, by James E. Keating, Asst. U. S. Attorney.

[fol. 339] IN UNITED STATES DISTRICT COURT

[Title omitted]

PROOF OF SERVICE—Filed September 30, 1946

Service of a copy of the following papers in the above entitled action is hereby acknowledged this 23rd day of September, 1946:

(1) Petition of Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., for appeal to the Supreme Court of the United States from the Final Decree of the District Court of the United States for the Northern District of Indiana, South Bend Division, entered July 25, 1946;

(2) Assignment of Errors and Prayer for Reversal;

(3) Statement as to Jurisdiction;

(4) Order Allowing Appeal;

(5) Citation;

(6) Undertaking for Costs; and

(7) Notice of Filing required by Rule 12(2) of the Rules of the Supreme Court.

s/ Wendell Berge for United States of America.

[fol. 340] State of New York
County of New York, ss.:

Joseph A. McManus, being duly sworn, deposes and says:

I am an attorney associated with and practicing law in the offices of Samuel S. Isseks, 30 Broad Street, New York, N. Y. one of the attorneys of record for appellants Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc. On the 23rd day of September, 1946, I served, pursuant to paragraph 2 of Rule 12 of the Revised Rules of the Supreme Court of the United States, copies of the said appellants' Notice, Petition for Appeal, Assignment of Errors and Prayer for Reversal, Statement as to Jurisdiction, Order Allowing Appeal, Bond and Citation on Appeal, upon the appellee herein, by delivering to and leaving personally with Hon. Wendell Berge, Assistant Attorney General of the United States, at his office, Constitution Avenue and Tenth Street, N.W., Washington, D. C., a true copy of each thereof.

I further know the aforesaid Hon. Wendell Berge to be the aforesaid Assistant Attorney General of the United States and he represented himself as authorized to accept such service on behalf of the United States of America.

Joseph A. McManus

Subscribed and sworn to before me this 23rd day of September, 1946. William J. Hegarty, William J. Hegarty, 30 Broad St., N. Y., N. Y. Attorney and Counsellor-at-Law.

[fols. 341-342] And now at the request of Edward Scheer, Attorney for Commercial Investment Company, the praecipe for record of transcript on appeal is refiled as of this date, (September 30, 1946).

IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE—Filed October 4, 1946

To: United States District Attorney, Northern District of Indiana.

You are hereby notified that the defendants in the above cause, the Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc. have re-filed their Praecipe in the above Court on September 30th, 1946, which said Praecipe is in the same form as that of which copies were served upon you on September 20th, 1946.

Scheer and Scheer and Taylor, by Edward O. Scheer.

Acknowledgement

I hereby acknowledge service of the above notice this 4th day of October, 1946.

James E. Keating, Asst. United States Attorney for the Northern District of Indiana, by Marie M. Schultz.

[fol. 343] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Filed September 19, 1946

It appearing to the Court that an appeal is pending in the above entitled cause to the United States Supreme Court, that the forty (40) day period allowed by Rule 10(2) of the Rules of the Supreme Court of the United States, will expire on October 28th, 1946, and for good cause shown to the Court,

It is hereby ordered by the Court, that the time within which the transcript of record in this cause shall be filed with the Clerk of the United States Supreme Court be and the same hereby is extended and enlarged thirty (30) days from and after the 28th day of October, 1946.

Dated this 19th day of October, 1946.

Patrick T. Stone, Judge, United States District Court.

[fol. 344] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Northern District of Indiana, ss:

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 345] IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

Docket No. 643

STATEMENT OF POINTS TO BE RELIED ON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed November 6, 1946

Ford Motor Company, Appellant in the above entitled proceeding, intends to rely therein on each point set forth in its assignment of errors.

Said Appellant represents that it is necessary for the consideration of this cause that all of the record filed in this court by said Appellant be printed, in accordance with the stipulation covering the printing of record in this proceeding and in No. 644, filed concurrently herewith.

Dated at Detroit, Michigan this 1st day of November, 1946.

Clifford B. Longley, Clifford B. Longley, Wallace R. Middleton, Wallace R. Middleton, Attorneys for Ford Motor Company, 1400 Buhl Building, Detroit, Michigan.

Undersigned counsel for the United States of America, Appellee herein, hereby accepts and acknowledges service of copy of the foregoing statement of points to be relied upon and designation of the parts of the record to be printed.

November 6, 1946.

George T. Washington—M. F., Acting Solicitor General, Attorney for Appellee, United States of America.

[fol. 345a] [File endorsement omitted.]

[fol. 346] IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 644

STATEMENT OF POINTS TO BE RELIED ON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed November 6, 1946

Now come the appellants in the above-entitled proceeding, and for their statement of points relied upon adopt their assignments of errors.

Said appellants represent that it is necessary for the consideration of this cause that all of the record filed in this Court by said appellants be printed, in accordance with the stipulation covering the printing of record in this proceeding and in No. 643, filed concurrently herewith.

Dated at New York, N. Y., this 4th day of November, 1946.

Samuel S. Isseks, Samuel S. Isseks, Attorney for Commercial Investment Trust Corporation, and others, 30 Broad Street, New York, N. Y.

Undersigned counsel for the United States of America, Appellee herein, hereby accepts and acknowledges service of copy of the foregoing statement of points to be relied upon and designation of the parts of the record to be printed.

November 6, 1946.

George T. Washington—M. F., Acting Solicitor General, Attorney for Appellee, United States of America.

[fol. 346a] [File endorsement omitted.]

[fol. 347] IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

Nos. 643 and 644

STIPULATION AS TO RECORD—Filed November 6, 1946

IT IS HEREBY STIPULATED by and between the Appellant, Ford Motor Company, by its attorneys, Clifford B. Long-

ley and Wallace R. Middleton, by the Appellants, Commercial Investment Trust Company, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., by their attorney, Samuel S. Isseks, and the United States of America, by its attorney, Holmes Baldridge, that in the above entitled appeals only one record need be printed, including therein all of the papers contained in each of the two separate records but deleting therefrom the following parts of the record in No. 644 which duplicate the record in No. 643:

Complaint of United States of America, filed November 7, 1938 ..... Page 2
Final Decree entered November 15, 1938..... Page 21
Order of appointment of Patrick T. Stone, Judge ..... Page 47
Instructions of Trial Court to Jury in U. S. v. General Motors Corp., et al. ..... Page 61
Findings of Fact, Conclusions of Law, and Order entered July 25, 1946..... Page 133

Dated at Washington, D.C. this 6th day of November, 1946.

Clifford B. Longley, Wallace R. Middleton, Attorneys for Appellant, Ford Motor Company.
Samuel S. Isseks, Attorney for Appellants, Commercial Investment Trust Corporation, et al.
Holmes Baldridge, Attorney for Appellee, United States of America.

[fol. 348] SUPREME COURT OF THE UNITED STATES.

No. 643, October Term 1946

ORDER NOTING PROBABLE JURISDICTION—November 12, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson took no part in the consideration or decision of this question.

[fol. 349] SUPREME COURT OF THE UNITED STATES

No. 644, October Term, 1946

ORDER NOTING PROBABLE JURISDICTION—November 12, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson took no part in the consideration or decision of this question.

Endorsed: File No. 51,508 Northern Indiana, D. C. U. S., Term No. 644, Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, et al., Appellants, vs. The United States of America. Filed October 25, 1946. Term No. 644 O.T. 1946.

Endorsed: File No. 51,507 Northern Indiana, D. C. U. S., Term No. 643, Ford Motor Company, Appellant, vs. The United States of America. Filed October 25, 1946. Term No. 643 O.T. 1946.

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